

**SECTION 2.** Chapter 450, Acts of the 68th Legislature, Regular Session, 1983 (Article 5143g, Vernon's Texas Civil Statutes), is repealed.

**SECTION 3.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 17, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 248 on May 6, 1985, by the following vote: Yeas 144, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 1, 1985, by the following vote: Yeas 31, Nays 0.

Approved: May 22, 1985

Effective: Immediately

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## CHAPTER 133

### H.B. No. 2

An Act relating to the conservation, development, and protection and enhancement of the quality of, and flood and subsidence control for, surface and underground water and bays and estuaries and providing various financing mechanisms to finance conservation, development, and protection and enhancement of the quality of, and flood, subsidence control, recharge, desalinization, and chloride control for, surface and underground water and agricultural soil and water conservation.

*Be it enacted by the Legislature of the State of Texas:*

## ARTICLE 1. WATER CONSERVATION AND DEVELOPMENT

**SECTION 1.01.** Section 11.002, Water Code, is amended by adding Subdivision (8) to read as follows:

(8) "Conservation" means:

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

**SECTION 1.02.** Section 17.001, Water Code, is amended by adding Subdivision (14) to read as follows:

(14) "Conservation" means:

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

**SECTION 1.03.** Section 17.122, Water Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) If an applicant has a program of water conservation, he shall state in his application that he has such a program and shall describe that program in the manner required by board rules.

(d) If the applicant claims an exemption under Subsection (c), Section 17.125, of this code, he shall state the exemption in his application and provide information relating to that exemption as provided by board rules.

**SECTION 1.04.** Section 17.125, Water Code, is amended to read as follows:

**Sec. 17.125. APPROVAL OF APPLICATION.** (a) The board by resolution may approve an application if, after considering the factors listed in Section 17.124 of this code and any other relevant factors, the board finds:

(1) that the public interest requires state participation in the project;

(2) that the political subdivision cannot reasonably finance the project without state assistance in the amount finally approved by the board; and

(3) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision during the succeeding period of not more than 50 years.

(b) Before the board grants the application or provides any funds under an application, it shall require an applicant to adopt a program of water conservation for the more efficient use of water that incorporates the practices, techniques, or technology prescribed by Subdivision (14)(B), Section 17.001, of this code and that the department determines will meet reasonably anticipated local needs and conditions. The program may include but is not limited to any or all of the following:

- (1) restrictions on discretionary water uses, such as lawn watering;
- (2) plumbing code standards for water conservation in new building construction;
- (3) retrofit programs to improve water-use efficiency in existing buildings;
- (4) educational programs;
- (5) universal metering;
- (6) conservation-oriented water rate structures;
- (7) drought contingency plans; and
- (8) distribution system leak detection and repair.

(c) The board may not require a program of water conservation to be adopted under Subsection (b) of this section if:

- (1) an emergency exists as determined by the board;
- (2) the amount of financial assistance to be provided is \$500,000 or less; or
- (3) the applicant demonstrates and the board finds that the submission of such a program is not reasonably necessary to facilitate conservation or conservation measures.

(d) To the extent funds are available, the board shall establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation plans required by this section and other sections of this code.

(e) If the political subdivision will utilize the project to furnish water or services to another political subdivision that in turn will furnish the water or services to the ultimate consumer, the requirements of the board relative to water conservation can be met through contractual agreements between the political subdivisions providing for establishment of a water conservation plan and other measures.

(f) Rules adopted under this section must state the criteria for preparation, review, and enforcement of an applicant's conservation program.

**SECTION 1.05.** Section 15.103, Water Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) If an applicant has a program of water conservation, he shall state in his application that he has such a program and shall describe that program in the manner required by board rules.

(e) If the applicant claims an exemption under Subsection (c), Section 17.125, of this code, he shall state the exemption in his application and provide information relating to the exemption as required by board rules.

**SECTION 1.06.** Subdivision (9), Section 15.001, Water Code, is amended to read as follows:

(9) "Conservation" means: ~~[as used herein]~~

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses ~~[shall include but not be limited to projects to develop water resources as well as projects to reduce consumption of water and projects to promote more efficient use of water].~~

**SECTION 1.07.** Section 15.106, Water Code, is amended to read as follows:

**Sec. 15.106. APPROVAL OF APPLICATION.** (a) ~~The [After notice and hearing, the]~~ board, by resolution, may approve an application if after considering the factors listed in Section 15.105 of this code and any other relevant factors, the board finds:

(1) that the public interest requires state participation in the project; and

(2) that in its opinion the revenue or taxes ~~[or both revenue and taxes]~~ pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision.

(b) Before the board grants the application or provides any financial assistance under an application, it shall require an applicant to adopt or to have already implemented a program of

water conservation for the more efficient use of water that incorporates the practices, techniques, or technology prescribed by Subdivision (9)(B), Section 15.001, of this code and that the department determines will meet reasonably anticipated local needs and conditions. The program may include but is not limited to any or all of the following:

- (1) restrictions on discretionary water uses, such as lawn watering;
- (2) plumbing code standards for water conservation in new building construction;
- (3) retrofit programs to improve water-use efficiency in existing buildings;
- (4) educational programs;
- (5) universal metering;
- (6) conservation-oriented water rate structures;
- (7) drought contingency plans; and
- (8) distribution system leak detection and repair.

(c) The board may not require a program of water conservation to be adopted under Subsection (b) of this section if:

- (1) an emergency exists as determined by the board;
- (2) the amount of financial assistance to be provided is \$500,000 or less; or
- (3) the applicant demonstrates and the board finds that the submission of such a program is not reasonably necessary to facilitate conservation or conservation measures.

(d) To the extent funds are available, the board shall establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation plans required by this section and other sections of this code.

(e) If the political subdivision will utilize the project to furnish water or services to another political subdivision that in turn will furnish the water or services to the ultimate consumer, the requirements of the board relative to water conservation can be met through contractual agreements between the political subdivisions providing for establishment of a water conservation plan and other necessary measures.

(f) Rules adopted under this section must state the criteria for preparation, review, and enforcement of an applicant's conservation program.

**SECTION 1.08.** Chapter 11, Water Code, is amended by adding Section 11.1271 to read as follows:

**Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS.** The commission may require the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures, as defined by Subdivision (8)(B), Section 11.002, of this code.

**SECTION 1.09.** Section 11.134, Water Code, is amended to read as follows:

**Sec. 11.134. ACTION ON APPLICATION.** (a) After the hearing, the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part.

(b) The commission shall grant the application only if:

- (1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;
- (2) unappropriated water is available in the source of supply; ~~and~~
- (3) the proposed appropriation:
  - (A) contemplates the application of water to any beneficial use;
  - (B) does not impair existing water rights or vested riparian rights; and
  - (C) is not detrimental to the public welfare; and
- (4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Subdivision (8)(B), Section 11.002, of this code.

**SECTION 1.10.** Section 11.037, Water Code, is amended to read as follows:

**Sec. 11.037. WATER SUPPLIERS: RULES AND REGULATIONS.** (a) Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by this chapter shall make and publish reasonable rules and regulations relating to:

- (1) the method of supply;
- (2) the use and distribution of the water; and
- (3) the procedure for applying for the water and for paying for it.

(b) Each person, association of persons, corporation, and district authorized by law to carry out irrigation powers that is conserving or supplying water for any of the purposes authorized by this chapter may make and publish reasonable rules relating to water conservation, as defined by Subdivision (8)(B), Section 11.002, of this code.

## ARTICLE 2. FINANCIAL ASSISTANCE PROGRAMS

**SECTION 2.01.** Subdivisions (5) and (6), Section 15.001, Water Code, are amended to read as follows:

(5) "Political subdivision" means a city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, ~~[or]~~ any interstate compact commission to which the state is a party, *and any nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).*

(6) "Project" means any undertaking or work to conserve, convey, and develop surface or subsurface water resources *in* ~~[of]~~ the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide *nonstructural and structural* flood control, *Sec. 15.102]* drainage, *subsidence control, recharge, chloride control, and desalinization*, and to carry out other purposes defined by board rules.

**SECTION 2.02.** Subsection (a), Section 15.002, Water Code, is amended to read as follows:

(a) The legislature finds that it is in the public interest and to the benefit of the general public of the state to encourage and to assist in the planning and construction of projects to develop and conserve the storm water and floodwater as well as the ordinary flows of the rivers and streams of the state, to maintain and enhance the quality of the water of the state, to provide protection to the state's citizens from the floodwater of the rivers and streams of the state, *to provide drainage, subsidence control, recharge, chloride control, and desalinization*, and other purposes as provided by law or board rule.

**SECTION 2.03.** Section 15.004, Water Code, is amended to read as follows:

**Sec. 15.004. TRANSBASIN DIVERSION.** Money on deposit in a fund created under *Article III, Section 49-d-3, [Article VIII, Section 24(b),]* of the Texas Constitution shall not be used to finance or in aid of any project under this chapter that contemplates or results in the removal from the basin of origin of any surface water necessary to supply the reasonably foreseeable future water requirements for the next ensuing 50-year period within the river basin of origin, except on a temporary, interim basis.

**SECTION 2.04.** Sections 15.101-15.105 and Sections 15.107-15.112, Water Code, are amended to read as follows:

**Sec. 15.101. WATER LOAN ASSISTANCE FUND.** (a) The water loan assistance fund is created, to be funded by *direct appropriation and by* the board at its discretion from the fund.

(b) Repayments of loans shall be deposited in the water assistance fund.

**Sec. 15.102. FINANCIAL ASSISTANCE.** The loan fund may be used by the board to provide *loans of* financial assistance to political subdivisions for the construction, acquisition, improvement, or enlargement of projects *involving water conservation, water development, or water quality enhancement, providing nonstructural and structural flood control, drainage, project recreation lands and revenue-generating recreational improvements, or subsidence control within any watershed, or providing recharge, chloride control, or desalinization as provided [defined] by legislative appropriations, this chapter, and the board rules.*

**Sec. 15.103. APPLICATION FOR ASSISTANCE.** (a) In an application to the board for a *loan of* financial assistance from the loan fund, the applicant shall include:

- (1) the name of the political subdivision and its principal officers;
- (2) a citation of the law under which the political subdivision operates and was created;
- (3) the total cost of the project;
- (4) the amount of state financial assistance requested;
- (5) the plan for repaying the total cost of the project; and
- (6) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for a *loan of* financial assistance from the loan fund unless it is submitted in affidavit form by the officials of the political subdivision. The board shall prescribe the affidavit form in its rules.

(c) The rules shall not restrict or prohibit the board from requiring additional factual material from an applicant.

**Sec. 15.104. CERTIFICATE OF COMMISSION OR APPROVAL BY COMMISSION.** (a) Except as provided by Subsection (b) of this section, the board shall not deliver funds pursuant to an application for a *loan of* financial assistance from the loan fund until the political subdivision has furnished the board a resolution adopted by the commission certifying:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the project will provide; or

(2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an applicant includes a proposal for a waste water treatment plant, the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but the board may not deliver funds for the waste water treatment plant until the political subdivision has obtained written evidence of approval of the plans for the waste water treatment plant from the executive director.

Sec. 15.105. **CONSIDERATIONS IN PASSING ON APPLICATION.** In passing on an application from a political subdivision for a loan of financial assistance from the loan fund, the board shall consider but is not limited to:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs; and

(4) the ability of the applicant to finance the project without state assistance.

Sec. 15.107. **METHOD OF MAKING LOANS OF FINANCIAL ASSISTANCE.** (a) *The board may make loans of financial assistance available to successful applicants in any manner that it considers economically feasible including:*

(1) *contracts or agreements with a political subdivision for the payment of the principal of or interest on or both the principal of and interest on bonds or other obligations issued or to be issued by the political subdivision;*

(2) *contracts or agreements with a political subdivision for the purpose of providing the political subdivision's share of any cost-sharing required as a participant in or local sponsor of any federal project; or*

(3) *purchase of the bonds or other obligations of a political subdivision for the purpose of completely or partially financing the project for which the application is being submitted.*

(b) *Contracts or agreements entered into under Subdivision (1) of Subsection (a) of this section may cover all or any part of the debt service requirements in a given year and may cover debt service requirements in as many years of an issue as the board considers appropriate.*

(c) *In a determination on a loan for financial assistance, the board may approve interest deferral or the capitalization of interest costs and may approve periods of repayment for the loans of up to 50 years.*

Sec. 15.108. **RECOMMENDATIONS FOR FUNDING BY LEGISLATURE.** (a) *If money is not available in the fund to provide money for projects approved under this subchapter, the board shall prepare and submit with its biennial budget request to the Legislative Budget Board and to the presiding officers of each house of the legislature a list of all projects approved by the board under this subchapter.*

(b) *The list of projects submitted to the Legislative Budget Board and to the presiding officers of each house of the legislature shall include relevant information relating to each project and recommendations relating to the terms under which loans of financial assistance should be made to each applicant and projected amounts of money that will be required each biennium to fund each project to its completion.*

Sec. 15.109. **DELIVERY OF LOANS OF FINANCIAL ASSISTANCE.** (a) *As money becomes available in the loan fund, the board shall deliver the funds under the approved applications.*

(b) *The board shall deliver money in the fund that is provided by legislative appropriation in the manner provided by and subject to the restrictions of the legislative appropriation [The board may provide financial assistance by using the money in the loan fund to contract with a political subdivision under terms and conditions and within limitations established by the board, for the payment of the principal of or interest on or both the principal of and interest on bonds or other obligations issued or to be issued by a political subdivision].*

Sec. 15.110. **REQUIREMENTS FOR POLITICAL SUBDIVISIONS.** (a) Subject only to constitutional limitations, all contracting political subdivisions may issue and execute those bonds, notes, or other obligations necessary to conform to and comply with repayment obligations adopted by the board.

(b) *Loans of financial [Financial] assistance to a political subdivision under this subchapter shall be repaid to the board, and the payments made to the board by the political subdivision for these loans of [this] financial assistance shall be made in compliance with terms and conditions established by the board.*

Sec. 15.111 ~~[15-108]~~. **APPROVAL AND REGISTRATION.** The board shall not contract for the payment of the principal of or interest on or both the principal of and interest on any bonds or other obligations that have not been approved by the attorney general and registered by the comptroller.

Sec. 15.112 ~~[15-109]~~. **CONTRACTS INCONTESTABLE.** Contracts entered into by the board for the payment of the principal of or interest on or both the principal of and interest on bonds or other obligations issued by a political subdivision are valid, binding, and incontestable after:

- (1) approval of the bonds or other obligations by the attorney general;
- (2) registration of the bonds or other obligations by the comptroller; and
- (3) purchase by and delivery of the bonds or other obligations to the purchaser.

Sec. 15.113 ~~[15-110]~~. **INSPECTION OF PROJECTS.** (a) The department may inspect the construction of a project any time to assure that:

- (1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and
- (2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the department does not subject the state to any civil liability.

Sec. 15.114 ~~[15-111]~~. **ALTERATION OF PLANS.** After board approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the executive director authorizes the alteration.

Sec. 15.115 ~~[15-112]~~. **CERTIFICATE OF APPROVAL.** The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to the director's plans as approved by the board or as altered with the executive director's approval;
- (2) failure to construct the works in accordance with sound engineering principles; or
- (3) failure to comply with any terms of the contract.

**SECTION 2.05.** Chapter 15, Water Code, is amended by adding Subchapter D to read as follows:

#### **SUBCHAPTER D. WATER BOND INSURANCE PROGRAM**

Sec. 15.201. **DEFINITIONS.** (a) *In this subchapter:*

- (1) *"Program" means the water bond insurance program.*
- (2) *"Bonds" means bonds or other obligations of a political subdivision or water supply corporation issued to provide funds for a project defined in Subsection (b) of this section.*
- (3) *"Insured bonds" means bonds or other obligations insured by the state under this subchapter.*
- (4) *"Issuer" means a political subdivision or water supply corporation issuing bonds or other obligations eligible to be insured under the program.*
- (5) *"Water supply corporation" means a nonprofit member-owned, consumer-owned water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).*

(b) *Notwithstanding the definition in Subdivision (6), Section 15.001, of this code, in this subchapter, "project" means any undertaking or work to conserve, convey, and develop surface or subsurface water resources of the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide for flood control and drainage, to provide recharge or chloride control, or to provide for desalinization, and to carry out other purposes defined by board rules.*

Sec. 15.202. **CREATION AND ADMINISTRATION OF PROGRAM.** (a) *The water bond insurance program is created pursuant to Article III, Section 49-d-4, of the Texas Constitution to insure to holders of insured bonds that in the event of default or impending default the state will pay, to the extent authorized by this subchapter, the principal of or interest on or both principal of and interest on the bonds.*

(b) *The board shall administer the program in the manner provided by this subchapter and by rules of the board.*

Sec. 15.203. **ELIGIBLE BONDS.** (a) *Only revenue, general obligation, tax, or combination bonds issued by a political subdivision or a water supply corporation for a project qualifying for assistance under this subchapter and board rules are eligible to be insured under the program.*

(b) *Bonds issued for a term longer than 50 years are not eligible to be insured under the program.*

Sec. 15.204. **RULES.** *The board shall adopt necessary rules to carry out this subchapter.*

*Sec. 15.205. INSURANCE. The board may pledge the general credit of the state, to the extent authorized by Article III, Section 49-d-4, of the Texas Constitution, to insure the payment of the principal of or interest on or both the principal of and interest on eligible bonds issued by an issuer in the event of default or impending default of the insured bonds.*

*Sec. 15.206. APPLICATION FOR INSURANCE. (a) An issuer may apply in writing to the board for the insurance of its bonds.*

*(b) The application must include the following information:*

- (1) the name of the issuer;*
- (2) citations of the laws under which the issuer is created and operates and under which the bonds to be insured are to be issued;*
- (3) the total amount of bonds for which insurance coverage is sought and the anticipated interest rate on the bonds;*
- (4) the term for which the bonds are to be issued;*
- (5) the purpose or purposes for which the bonds are to be issued;*
- (6) financial information relating to the issuance of the bonds and to the financial stability and future of the issuer; and*
- (7) any other information the board requires by its rules or otherwise considers necessary in making a determination of the application.*

*(c) The board by rule shall prescribe the form and procedure for submitting and processing an application.*

*Sec. 15.207. CONSIDERATIONS IN PASSING ON APPLICATION. In addition to criteria established in its rules, the board in passing on an application shall consider:*

- (1) the purpose or purposes for which the issuer is issuing the bonds;*
- (2) the financial ability of the issuer to meet its obligations under the bonds;*
- (3) the risk to the State of Texas in insuring the bonds and the ability of the state to pay the insurance coverage; and*
- (4) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring similar state assistance and the benefits of those projects to other areas.*

*Sec. 15.208. APPROVAL OF APPLICATION. (a) After notice and hearing, the board by resolution may approve an application if, after considering the information in the application and presented at the hearing, criteria established by this subchapter, and the rules and other relevant factors, the board finds:*

- (1) that the bonds are being issued to finance a project that serves the public interest;*
  - (2) that there is strong evidence and a high degree of certainty that the issuer will be able to meet its obligations under the bonds; and*
  - (3) that an applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water which the project will provide.*
- (b) If the board finds that an applicant is not using water efficiently, the board may require the applicant to develop a conservation program to provide for more efficient use of water.*
- (c) The board may establish an educational and technical assistance program to assist political subdivisions in developing comprehensive water conservation programs required by this section and other sections of this code.*
- (d) If the issuer plans to utilize the project to furnish water or services to a political subdivision that in turn plans to furnish the water or services to the ultimate consumer, the requirements of the board relative to water conservation can be met through contractual agreements between the issuer and the political subdivision providing for establishment of a water conservation program and other necessary measures.*

*Sec. 15.209. CONTRACTS, AGREEMENTS, AND OTHER DOCUMENTS. (a) On approval of an application, the board shall enter into a contract with the issuer for the insurance of the bonds on terms and conditions agreed to by the parties. The terms and conditions must comply with this subchapter and rules adopted by the board.*

*(b) The insurance contract shall include:*

- (1) the extent of the insurance coverage;*
- (2) the terms and conditions of the insurance coverage;*
- (3) rights in addition to those provided by law reserved by the board against the issuer in the event the board must pay all or part of the insurance coverage; and*
- (4) any other provision required in order to be in compliance with the board's rules.*

*(c) The board shall execute any other documents necessary to legally bind the state to insure payment to the bondholders on default or impending default.*

(d) For the insurance coverage of bonds to be effective, it must be approved by the attorney general as to the legality of the insurance coverage. Documents relating to the insurance of the bonds shall be submitted to the attorney general for approval at the same time as the bonds and records relating to the issuance of the bonds are submitted for approval. The bonds issued by a political subdivision or water supply corporation and the insurance coverage approved by the board are valid, binding, and incontestable after:

- (1) approval by the attorney general;
- (2) registration by the comptroller; and
- (3) payment by and delivery to the buyer.

**Sec. 15.210. LIMITATION ON INSURANCE COVERAGE.** (a) Except as provided by Subsection (c) of this section, the total principal balance of all insurance coverage issued by the board and outstanding may not exceed the dollar amount that equals two times the maximum amount of money that the state is authorized to pay under the program by the constitution.

(b) The board may not approve insurance coverage in any state fiscal year that exceeds a total of \$100 million for all applicants.

(c) The legislature, by a two-thirds vote of each house, may change the limitations provided by Subsections (a) and (b) of this section.

**Sec. 15.211. INSURANCE FEES.** (a) The board shall adopt a schedule of fees to be charged an issuer for insurance coverage provided under this subchapter.

(b) Fees charged by the board under this section shall be calculated to provide a reasonable reserve against defaults and impending defaults.

(c) Fees collected under this section shall be deposited in a special reserve fund created in the state treasury for the purpose of paying amounts on default or impending default of any bonds without resorting to the general credit of the state.

**Sec. 15.212. PAYMENT BY STATE.** (a) On receipt by the executive director from the paying agent for any insured bond of a written notice by registered or certified mail that a payment on the bond is due but has not been made to the paying agent by the issuer and that the issuer's reserves are insufficient to cover the payment, the executive director shall have a deposit of funds made with the paying agent sufficient to cover the payment due on the bond less any amount already held by the paying agent to pay the principal of and interest on the bond.

(b) On transfer of the payment to the paying agent under Subsection (a) of this section and on receipt of the uncanceled bond or coupon, the state becomes the owner of the bond or coupon and is subrogated to the rights of the bondholder with respect to the amount paid by the state.

(c) After making payment on the bonds under Subsection (a) of this section, the board shall attempt to collect from the issuer the amount paid by the state. The board may enter into agreements for the issuer to pay those claims, may enforce any provisions of the bonds relating to actions that may be taken by bondholders on default, or may sue the issuer to collect amounts paid by the state. The attorney general, at the request of the board, shall take all necessary legal action to assist the board in carrying out this subsection.

(d) Money collected under Subsection (c) of this section shall be deposited in the special reserve fund up to the amount used from that fund to pay the defaulted bonds. Any remaining money collected and not deposited in that fund shall be deposited in the general revenue fund.

**Sec. 15.213. REFUNDING BONDS.** Without the express written consent of the board, insurance provided by the board under this subchapter shall not extend to refunding bonds issued to replace bonds that have been insured by the board. The board may give its consent under procedures provided by its rules.

**Sec. 15.214. INSPECTION OF PROJECTS.** (a) The department may inspect at any time the construction of a project being constructed with proceeds of revenue bonds insured by the board to assure that:

- (1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and
- (2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the department does not subject the state to any civil liability.

**Sec. 15.215. ALTERATION OF PLANS.** After board approval of engineering plans, a political subdivision or water supply corporation may not make any substantial or material alteration in the plans unless the executive director authorizes the alteration.

**Sec. 15.216. CERTIFICATE OF APPROVAL.** The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to plans as approved by the board or as altered with the executive director's approval;
- (2) failure to construct the project in accordance with sound engineering principles; or



(3) failure to comply with any terms of the contract.

Sec. 15.217. **OPEN RECORDS AND OPEN MEETINGS LAWS.** Water supply corporations receiving any assistance under this Act are subject to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

Sec. 15.218. **REPORT.** (a) Not later than January 1 of each odd-numbered year, the department shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report relating to the financial impact of the bond insurance program during the immediately preceding biennium.

(b) The report shall include:

(1) the total amount of insurance coverage authorized by the board during the biennium;

(2) the number of insurance coverage authorizations granted by the board;

(3) a list of the issuers receiving insurance coverage from the board during the biennium and the amount of insurance coverage provided to each issuer;

(4) an analysis of the marketability of the bonds of the issuers receiving insurance coverage during the biennium and the effect that the insurance coverage had on interest rates and bond ratings for those issuers;

(5) an analysis of the marketability of bonds issued by the state and its agencies during the biennium and the effect that the bond insurance program had on interest rates on state bonds and the state's bond rating;

(6) an analysis of the impact on the commercial bond market and bond interest rates generally during the biennium as a result of the implementation of the bond insurance program with particular emphasis on the impact on bonds of political subdivisions and water supply corporations that did not participate in the program;

(7) recommendations for changes in the bond issuance program that will favorably affect marketability of state bonds and issuer's bonds, bond ratings, and interest rates; and

(8) any other information, analyses, and recommendations that the department considers necessary to give the governor and the legislature a complete understanding of the financial impact of the bond insurance program.

(c) The state comptroller and the state treasurer on request shall provide to the department all information and assistance necessary for the department to prepare this report.

[Sections 15.219 to 15.300 reserved for expansion]

**SECTION 2.06.** Subchapter E, Chapter 15, Water Code, is amended by adding Section 15.3061 and amending Sections 15.301, 15.322, and 15.323 to read as follows:

Sec. 15.301. **FUND CREATED.** There is created a ~~revolving~~ fund in the state treasury to be known as the storage acquisition fund which is to be funded by direct appropriations and by transfers from the fund at the discretion of the board.

Sec. 15.3061. **RECOMMENDATIONS FOR FUNDING BY LEGISLATURE.** (a) If money is not available in the fund to provide money for projects approved under this subchapter, the board shall prepare and submit with its biennial budget request to the Legislative Budget Board and to the presiding officers of each house of the legislature a list of all projects approved by the board under this subchapter.

(b) The list of projects submitted to the Legislative Budget Board and to the presiding officers of each house of the legislature shall include relevant information relating to each project and recommendations relating to the priorities for funding.

Sec. 15.322. **DISPOSITION OF PROCEEDS.** (a) The money received from any sale, transfer, or lease of facilities, or in the case of a sale or transfer involving revenue bonds, the money received as matured interest or principal on the bonds shall be placed in the general revenue fund ~~water assistance fund~~.

(b) If money received from a sale, transfer, or lease of facilities, or in the case of a sale or transfer involving revenue bonds, if the money received as matured interest or principal on the bonds, is money derived originally from the appropriation made in Section 2, Chapter 12, Acts of the 67th Legislature, 1st Called Session, 1981, or interest earned on that money, the money received as matured interest or principal on the bonds shall be placed in a special account in the water assistance fund.

Sec. 15.323. **SALE OF STORED WATER.** (a) The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price shall be determined by the board.

(b) Except as provided by Subsection (c) of this section, ~~The~~ money received from any sale shall be placed in the general revenue fund ~~water assistance fund~~.

(c) Money received from a sale of unappropriated public water or other water acquired by the state and stored by it or for it in a facility for which funds were provided from the appropriation made in Section 2, Chapter 12, Acts of the 67th Legislature, 1st Called Session, 1981, or interest earned on the money constituting that appropriation, must be deposited in a special account in the water assistance fund.

**SECTION 2.07.** Sections 17.011, 17.028, 17.077, and 17.271, Water Code, are amended to read as follows:

Sec. 17.011. **ISSUANCE OF WATER DEVELOPMENT BONDS.** (a) The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed \$400 million pursuant to ~~[the provisions of]~~ Article III, Section 49-c and Section 49-d, ~~[as amended,]~~ of the Texas Constitution, and the issuance of additional negotiable bonds in an aggregate amount not to exceed \$200 million pursuant to ~~[the provisions of]~~ Article III, Section 49-d-1, ~~[as amended,]~~ of the Texas Constitution and not to exceed \$980 million pursuant to Article III, Section 49-d-2, of the Texas Constitution.

(b) The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount of not to exceed the total principal amount the board has obligated the Texas Water Development Fund for the acquisition of storage facilities by the execution of a contract with the United States or any of its agencies under Article III, Section 49-d, of the Texas Constitution, and to the extent the bond proceeds are utilized to reduce the board's obligation under a contract with the United States or any of its agencies under Article III, Section 49-d, of the Texas Constitution, the bonds may not be considered in determining the aggregate amount of bonds issued under Article III, Sections 49-c, ~~[and]~~ 49-d, and 49-d-2, of the Texas Constitution, in addition to the contract with the United States or any of its agencies.

Sec. 17.028. **PAYMENT ENFORCEABLE BY MANDAMUS.** Payment of the bonds and performance of official duties prescribed by Article III, Sections ~~[Section]~~ 49-c, ~~[Section]~~ 49-d, ~~[as amended, and Section]~~ 49-d-1, and 49-d-2, ~~[as amended,]~~ of the Texas Constitution and by ~~[the provisions of]~~ this subchapter may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

Sec. 17.077. **CREDITS TO CLEARANCE FUND.** Except for proceeds from the sale of bonds and proceeds from the sale, refunding, or prepayment, of political subdivision bonds acquired in carrying out the purposes in Article III, Sections 49-c, 49-d, ~~[and]~~ 49-d-1, and 49-d-2, of the Texas Constitution, which shall be deposited in accordance with Sections 17.072, 17.134, and 17.180 of this code, and the proceeds from the sale, refinancing, or other liquidation of the investments made under Sections 17.083, 17.085, and 17.086 of this code which shall be deposited in the fund that provided the money for the investment, all money received by the board in any fiscal year, including all amounts received as repayment of loans to political subdivisions and interest on those loans, shall be credited to the clearance fund. Money in the clearance fund may be transferred at any time to the interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

Sec. 17.271. **PURPOSE.** The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Sections 49-d-1 and 49-d-2, ~~[Section 49-d-1, as amended,]~~ of the Texas Constitution to political subdivisions of the state for the construction of treatment works.

**SECTION 2.08.** Subdivision (10), Section 16.001, Water Code, is amended to read as follows:

(10) "Water development bonds" means the Texas Water Development Bonds authorized by Article III, Sections ~~[Section]~~ 49-c; ~~as amended,]~~ and ~~[Section]~~ 49-d, ~~[as amended, of Article III]~~ of the Texas Constitution and bonds dedicated to use for the purposes of those sections under Article III, Section 49-d-2, of the Texas Constitution.

**SECTION 2.09.** Subdivisions (5), (10), and (11), Section 17.001, Water Code, are amended to read as follows:

(5) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

(10) "Water development bonds" means the Texas Water Development Bonds authorized by Article III, Sections ~~[Section]~~ 49-c and; ~~as amended, and Section]~~ 49-d, ~~[as amended, of Article III]~~ of the Texas Constitution and bonds dedicated to use for the purposes of those sections and for flood control purposes under Article III, Section 49-d-2, of the Texas Constitution.

(11) "Water quality enhancement bonds" means the Texas Water Development Bonds authorized by *Article III*, Section 49-d-1, [~~as amended, of Article III~~] of the Texas Constitution and bonds dedicated to use for the purposes of that section by *Article III*, Section 49-d-2, of the Texas Constitution.

**SECTION 2.10.** Subdivision (4), Section 17.272, Water Code, is amended to read as follows:

(4) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of *Article III*, Section 49-d-1, [~~as amended,~~] of the Texas Constitution and proceeds from the sale of bonds dedicated to water quality enhancement purposes under *Article III*, Section 49-d-2, of the Texas Constitution.

**SECTION 2.11.** Section 17.001, Water Code, is amended by adding Subdivision (15) to read as follows:

(15) "Regional facility" means a water supply, wastewater collection and treatment, or other system which incorporates multiple service areas or drainage areas into an areawide service facility thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state the specified size of which is determined by:

- (A) population;
- (B) number of governmental entities served;
- (C) service capacity; or
- (D) any combination of the factors listed in Paragraphs (A) through (C) of this subdivision.

*Regional wastewater treatment facilities may also include those identified in the approved state water quality management plan and the annual updates to that plan.*

**SECTION 2.12.** Chapter 17, Water Code, is amended by amending Sections 17.124, 17.276, and 17.278, and by adding Sections 17.1251, 17.1252, and 17.2781 to read as follows:

**Sec. 17.124. CONSIDERATIONS IN PASSING ON APPLICATION.** (a) In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;
- (2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;
- (3) whether the political subdivision can reasonably finance the project without assistance from the state;
- (4) the relationship of the project to the overall, statewide water needs; and
- (5) the relationship of the project to the state water plan.

(b) *In passing on an application for financial assistance for regional facilities, water facilities for a political subdivision that is converting from the use of groundwater to the use of surface water, or a project that includes flood control, the board shall consider the factors set out for political subdivisions in Subsection (a) of this section except the board is not required to consider the factor set out in Subdivision (3) of that subsection.*

**Sec. 17.1251. FINDINGS FOR REGIONAL FACILITIES.** *In approving an application for financial assistance for regional facilities, water facilities for a political subdivision that is converting from the use of groundwater to the use of surface water, or a project that includes flood control, the board shall make the findings required by Subsection (a), Section 17.125 of this code, except the board is not required to make the finding set out in Subdivision (2) of that subsection.*

**Sec. 17.1252. LIMITATION ON USE OF FUNDS.** *If there is insufficient money available to fund all applications under this subchapter, the board shall give preference to applications for political subdivisions that the board finds cannot reasonably finance the project without assistance from the state.*

**Sec. 17.276. CONSIDERATIONS IN PASSING ON APPLICATION.** (a) In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the water quality needs of the waters into which effluent from the treatment works will be discharged and the benefit of the treatment works to such water quality needs in relation to the needs of other waters requiring state assistance in any manner and the benefits of those treatment works to the other waters;
- (2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the treatment works, including interest;
- (3) whether the political subdivision can reasonably finance the treatment works without assistance from the state;
- (4) the relationship of the treatment works to the overall, statewide water quality needs;

(5) the relationship of the treatment works to water quality planning for the state; and  
 (6) whether the political subdivision has been designated, pursuant to Section 26.082 of this code, to provide a regional system to serve all or part of the waste disposal needs of a defined area, the development of such systems being the declared policy of the legislature.

*(b) In passing on an application for financial assistance for regional facilities, the board shall consider the factors set out for political subdivisions in Subsection (a) of this section except the board is not required to consider the factor set out in Subdivision (3) of that subsection.*

**Sec. 17.278. APPROVAL OF APPLICATION.** *(a) The board by resolution may approve an application if, after considering the factors listed in Section 17.276 of this code and any other relevant factors, the board finds:*

*(1) that the public interest will benefit from state participation in the financing of the treatment works; and*

*(2) that the political subdivision cannot reasonably finance the treatment works without state assistance in the amount finally approved by the board.*

*(b) In approving an application for financial assistance for regional facilities, the board shall make the finding required by Subsection (a)(1) of this section.*

**Sec. 17.281. LIMITATION ON USE OF FUNDS.** *If there is insufficient money available to fund all applications under this subchapter, the board shall give preference to applications for political subdivisions that the board finds cannot reasonably finance the treatment works without assistance from the state.*

**SECTION 2.13.** Chapter 15, Water Code, is amended by amending Section 15.402 and adding Section 15.406 to read as follows:

**Sec. 15.402. RESEARCH AND PLANNING FUND.** The research and planning fund is created in the state treasury to be funded by direct appropriation and at the discretion of the board from the money in the fund.

**Sec. 15.406. REGIONAL FACILITY PLANNING.** *(a) The board may enter into contracts with political subdivisions to pay from the research and planning fund all or part of the cost of developing regional facility plans.*

*(b) A political subdivision that desires money from the research and planning fund for regional facility planning shall submit a written application to the board in the manner and form required by board rules.*

*(c) The application shall include:*

*(1) the name of the political subdivision;*

*(2) a citation to the laws under which the political subdivision was created and is operating including specific citation of all laws providing authority to plan, develop, and operate regional facilities;*

*(3) the amount requested from the board for regional facility planning; and*

*(4) any other information required by the board in its rules or specifically requested by the board.*

*(d) After notice and hearing, the board may award the applicant all or part of the requested funds that are considered necessary by the board for the political subdivision to carry out adequate regional facility planning.*

*(e) If the board grants an application under this section and awards funds for regional facility planning, the board shall enter into a contract with the political subdivision that includes:*

*(1) a detailed statement of the purpose for which the money is to be used;*

*(2) the total amount of money to be paid from the research and planning fund under the contract; and*

*(3) any other terms and conditions required by board rules or agreed to by the contracting parties.*

*(f) The board shall adopt rules establishing criteria of eligibility for regional facility planning money that considers:*

*(1) the relative need of the political subdivision for the money;*

*(2) the legal authority of the political subdivision to plan, develop, and operate regional facilities; and*

*(3) the effect of regional facility planning by the political subdivision on overall regional facility planning, development, and operation in the state and within the area in which the political subdivision is located.*

*(g) The board may require that regional facility plans developed under contracts entered into under this section be made available to the department as provided by board rules.*

**SECTION 2.14.** Subdivisions (6) and (7), Section 16.001, Water Code, are amended to read as follows:

(6) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party *and any nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).*

(7) "Project" or "facility" means any engineering undertaking or work to conserve, ~~and~~ develop *store, transport, and treat* surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods. "Project" or "facility" also includes:

(A) any device or system used in the storage, treatment, recycling, and reclamation of waste or the recycling and reuse of water, including an intercepting sewer, outfall sewer, pumping, power, and other equipment, and its appurtenances;

(B) an extension, remodeling, or alteration of or improvement or addition to an item listed in Paragraph (A) of this subdivision;

(C) an element essential to provide a reliable recycled supply of water, such as a standby treatment unit or clear well facility;

(D) any work, including a site for a work and the land acquired to be a part of the work or used in connection with the treatment process or used for ultimate disposal of residues resulting from that treatment;

(E) any plant, disposal field, lagoon, canal, incinerator area devoted to sanitary landfills, or other facility installed to treat, neutralize, or stabilize waste;

(F) a facility to provide for the collection, control, and disposal of waste heat; and

(G) public recreational land and revenue-generating recreational improvements for the efficient public enjoyment of projects.

**SECTION 2.15.** Sections 16.131 and 16.135, Water Code, are amended to read as follows:

Sec. 16.131. **AUTHORIZED PROJECTS.** The board may use *the state participation account* of the development fund for projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of any existing or proposed project.

Sec. 16.135. **BOARD FINDINGS.** Before the board may acquire *a facility or interest in a facility* ~~storage facilities in any reservoir~~, the board shall find affirmatively that:

(1) it is reasonable to expect that the state will recover its investment in the *facility* ~~facilities~~;

(2) the cost of the *facility* ~~facilities~~ exceeds the current financing capabilities of the area involved, and *the optimum regional* development of the *facility* ~~facilities~~ cannot be reasonably financed by local interests without state participation;

(3) the public interest will be served by acquisition of the *facility* ~~facilities~~; and

(4) the *facility* ~~facilities~~ to be constructed or reconstructed *contemplates* ~~contemplates~~ the optimum *regional* development ~~of the site~~ which is reasonably *required* ~~reserved~~ under all existing circumstances of the site.

**SECTION 2.16.** Subsection (a), Section 16.181, Water Code, is amended to read as follows:

(a) The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the *state participation* ~~water development~~ account.

**SECTION 2.17.** Section 17.072, Water Code, is amended by amending Subsection (b) and adding Subsections (f), (g), (h), and (i) to read as follows:

(b) *Except as provided by Subsections (f) and (h) of this section, [AH]* proceeds from the sale of water development bonds, together with all proceeds (excluding accrued interest which shall be deposited into the interest and sinking fund) from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes set out in Article III, Sections 49-c, ~~and~~ 49-d, and 49-d-2, of the Texas Constitution, shall be deposited in a special account in the development fund designated "water development account," and other money for deposit therein as provided in this chapter shall be credited to the water development account.

(f) All proceeds from the sale of the \$400 million in water development bonds authorized by Article III, Section 49-d-2, of the Texas Constitution for the purposes of state participation in the acquisition and development of facilities, together with all proceeds, excluding accrued interest, from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes of the state participation program, shall be deposited in a special account designated as the state participation account created in the development fund. Other money designated for deposit in that account by this chapter and Chapter 16 of this code shall be deposited in the state participation account. Accrued interest from the proceeds of the sale, refunding, or prepayment of political subdivision bonds shall be deposited in the interest and sinking fund.

(g) The state participation account may be used for any project and in any manner consistent with the constitution and this code.

(h) All proceeds from the sale of the \$200 million in water development bonds authorized by Article III, Section 49-d-2, of the Texas Constitution for the purposes of flood control, together with all proceeds, excluding accrued interest, from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes of the flood control program, shall be deposited in a special account designated as the flood control account created in the development fund. Other money designated for deposit in that account by this chapter shall be deposited in the flood control account. Accrued interest from the proceeds of the sale, refunding, or prepayment of political subdivision bonds shall be deposited in the interest and sinking fund.

(i) The flood control account may be used for any project and in any manner consistent with the constitution and this code.

**SECTION 2.18.** Chapter 15, Water Code, is amended by adding Section 15.006 to read as follows:

**Sec. 15.006. OPEN MEETINGS AND OPEN RECORDS LAWS.** Nonprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

**SECTION 2.19.** Chapter 16, Water Code, is amended by adding Section 16.002 to read as follows:

**Sec. 16.002. OPEN MEETINGS AND OPEN RECORDS LAWS.** Nonprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

**SECTION 2.20.** Chapter 17, Water Code, is amended by adding Section 17.002 to read as follows:

**Sec. 17.002. OPEN MEETINGS AND OPEN RECORDS LAWS.** Nonprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

**SECTION 2.21.** Chapter 17, Water Code, is amended by adding Subchapter H to read as follows:

#### **SUBCHAPTER H. FINANCIAL ASSISTANCE FOR FLOOD CONTROL**

**Sec. 17.771. PURPOSE.** The purpose of this subchapter is to provide for making loans of flood control funds authorized by Article III, Section 49-d-2, of the Texas Constitution, to political subdivisions of the state for the development of floodplain management plans and for structural and nonstructural flood control projects.

**Sec. 17.772. DEFINITIONS.** In this subchapter:

(1) "Flood control funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49-d-2, of the Texas Constitution, and reserved for flood control purposes.

(2) "Floodplain management plan" means a comprehensive plan for flood control within a watershed, based on analysis of alternative nonstructural and structural means of reducing flood hazards, including assessments of costs, benefits, and environmental effects and may include preliminary design of structural flood control projects.

(3) "Nonstructural flood control" includes such measures as:

(A) acquisition of floodplain land for use as public open space;

(B) acquisition and removal of buildings located in a floodplain; and

(C) relocation of residents of buildings removed from a floodplain.

(4) "Structural flood control" includes such measures as construction of stormwater retention basins, enlargement of stream channels, and modification or reconstruction of bridges.

(5) "Floodplain" means land subject to inundation by the 100-year-frequency flood.

(6) "Construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of projects, or the inspection or supervision of any of the foregoing items.

(7) "Financial assistance" means any loan of flood control funds made to a political subdivision for structural or nonstructural flood control measures through the purchase of bonds or other obligations of the political subdivision.

Sec. 17.773. **FINANCIAL ASSISTANCE.** The board may use flood control funds to provide financial assistance to political subdivisions for purposes of structural and nonstructural flood control and the development of floodplain management plans.

Sec. 17.774. **APPLICATION FOR ASSISTANCE.** In an application to the board for financial assistance, the applicant shall include:

- (1) the name of the political subdivision and its principal officers;
- (2) a citation of the law under which the political subdivision operates and was created;
- (3) a description of the flood control measures for which the financial assistance will be used;
- (4) the estimated total cost of the measures;
- (5) the amount of state financial assistance requested;
- (6) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;
- (7) the plan for repaying the financial assistance; and
- (8) any other information the board requires.

Sec. 17.775. **CONSIDERATIONS IN PASSING ON APPLICATION.** In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;
- (2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;
- (3) the capacity of the watershed to accommodate stormwater runoff;
- (4) the impact of the project on watershed capacity along the entire watershed and the degree to which that capacity was considered in planning the project;
- (5) whether the project will increase or decrease the volume or rate of stormwater runoff into any channel in the watershed;
- (6) the effect of the project on surface water elevations within the watershed and any downstream watershed;
- (7) the relationship of the project to any floodplain management plan for the watershed; and
- (8) whether adequate consideration was given to the effects of the project with regard to erosion and sediment control.

Sec. 17.776. **ACTION ON APPLICATION.** (a) After an application is received for financial assistance, the executive director shall submit the application to the board together with comments and recommendations of the development fund manager concerning the best method of making financial assistance available.

(b) The board may grant the application in whole or part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided, the amount of any such assistance, and in consultation with and pursuant to agreement with the political subdivision, the board shall determine the location, time, design, scope, and all other aspects of the construction to be performed.

Sec. 17.777. **APPROVAL OF APPLICATION.** The board by resolution may approve an application if, after considering the factors listed in Section 17.775 of this code and other relevant information, the board finds:

- (1) that the public interest requires state participation in the project;
- (2) that in its opinion the taxes pledged by the political subdivision will be sufficient to meet all obligations assumed by the political subdivision;

(3) if the project would increase the volume or rate of stormwater runoff, that adequate consideration was given to alternative approaches that would decrease or hold constant the volume or rate of stormwater runoff;

(4) that the project proposed in the application will not increase the peak water surface elevation of any portion of any stream within the watershed or within any downstream watershed; and

(5) that adequate consideration was given to the effects of the project with regard to erosion and sediment control.

**Sec. 17.778. METHOD OF FINANCIAL ASSISTANCE.** The board may provide financial assistance by using money in the flood control account to purchase bonds or other securities issued by the political subdivision to finance the project. The board may purchase bonds or securities that are secondary or subordinate to other bonds or securities issued by the political subdivision to finance the same project.

**Sec. 17.779. BOND MATURITY.** The board may not purchase bonds or other securities which have a maturity date more than 50 years from the date of issuance.

**Sec. 17.780. INTEREST RATE.** Bonds and securities purchased by the board with money derived from the sale of bonds issued under this chapter shall bear interest at the lending rate. The lending rate shall be affected by the payment of premiums or the deduction of discounts as necessary.

**Sec. 17.781. APPROVAL AND REGISTRATION.** The board shall not purchase any bonds or securities that have not been approved by the attorney general and registered by the comptroller.

**Sec. 17.782. BONDS INCONTESTABLE.** The bonds or other securities issued by a political subdivision are valid, binding, and incontestable after:

- (1) approval by the attorney general;
- (2) registration by the comptroller; and
- (3) purchase by and delivery to the board.

**Sec. 17.783. SECURITY FOR THE BONDS.** (a) Bonds purchased by the board shall be supported by taxes levied by the political subdivision for the purpose.

(b) The board shall establish conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

**Sec. 17.784. DEFAULT.** (a) In the event of a default in payment of the principal of or interest on bonds purchased by the board or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

**Sec. 17.785. SALE OF BONDS BY BOARD.** (a) The board may sell or dispose of bonds purchased with money in the flood control account. The board may not sell the bonds for less than amortized value and accrued interest.

(b) The board shall first offer the bonds at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds or other obligations at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale of such bonds or other obligations so purchased, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

**Sec. 17.786. PROCEEDS FROM SALE.** The proceeds from the sale of political subdivision bonds held by the board shall be credited to the flood control account, except that accrued interest shall be credited to the interest and sinking fund.

**Sec. 17.787. CONSTRUCTION CONTRACT REQUIREMENTS.** The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

- (1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;
- (2) that each contractor awarded a construction contract furnish performance and payment bonds;

(A) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and



(B) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision;

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the 10 percent retainage may be made by the political subdivision with approval of the executive director;

(5) that payment of the retainage remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the executive director in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices; and

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

**Sec. 17.788. FILING CONSTRUCTION CONTRACT.** The political subdivision shall file with the department a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

**Sec. 17.789. INSPECTION OF PROJECTS.** (a) The department may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the department does not subject the state to any civil liability.

**Sec. 17.790. ALTERATION OF PLANS.** After the executive director approves of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the executive director authorizes the alteration in accordance with rules of the board.

**Sec. 17.791. CERTIFICATE OF APPROVAL.** The executive director may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to approved plans;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

**SECTION 2.22.** Chapter 16, Water Code, is amended by adding Section 16.1351 to read as follows:

**Sec. 16.1351. RECREATIONAL ACCESS.** If the board is acquiring an interest in a storage facility, it must also find affirmatively that the applicant has a plan to provide adequate public recreational access areas to suitable recreational resources.

**SECTION 2.23.** Chapter 17, Water Code, is amended by adding Section 17.1253 to read as follows:

**Sec. 17.1253. RECREATIONAL ACCESS.** If the board is providing financial assistance for a water storage project, it must also find affirmatively that the applicant has a plan to provide adequate public recreational access areas to suitable recreational resources.

### ARTICLE 3. AGRICULTURAL SOIL AND WATER CONSERVATION

**SECTION 3.01.** Chapter 15, Water Code, is amended by adding Subchapters G, H, and I to read as follows:

#### SUBCHAPTER G. AGRICULTURAL SOIL AND WATER CONSERVATION PROGRAM

**Sec. 15.431. AGRICULTURAL TRUST FUND.** (a) The agricultural trust fund is a special fund created in the state treasury to be used as provided by this section.

(b) The agricultural trust fund consists of money transferred to that fund from the water assistance fund, money appropriated by the legislature, interest earned on the money in the agricultural trust fund, and other revenue required by law to be deposited in the agricultural trust fund.

(c) Money in the agricultural trust fund may be invested in the manner provided for investment of money in the permanent school fund.

(d) Money appropriated by the legislature to be maintained as principal in the fund, \$10 million of the money transferred to that fund by H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, and half of the money earned as interest on the money held as principal in the agricultural trust fund shall be maintained as principal. Money maintained as principal in the agricultural trust fund may not be spent for any purpose.

(e) Half of any money earned as interest on money maintained as principal in the agricultural trust fund shall be deposited to the credit of the agricultural soil and water conservation fund.

(f) The legislature may appropriate money to the agricultural trust fund to be maintained as principal in the fund.

**Sec. 15.432. CREATION OF FUND.** The agricultural soil and water conservation fund is a special fund created in the state treasury to be used as provided by this subchapter for the purposes stated in Section 15.434 of this code.

**Sec. 15.433. COMPOSITION OF FUND.** The agricultural soil and water conservation fund consists of transfers from the agricultural trust fund under Section 15.431(e) of this code, direct appropriations, and other revenue required by law to be deposited in the fund.

**Sec. 15.434. USE OF MONEY IN FUND.** Money deposited to the credit of the agricultural soil and water conservation fund, on appropriation by the legislature to the department, the Department of Agriculture, the State Soil and Water Conservation Board, the Texas Agricultural Experiment Station, the Texas Agricultural Extension Service, public colleges and universities, and other state agencies shall be used for the following purposes:

- (1) agricultural water conservation technical assistance programs;
- (2) agricultural water conservation, education, and demonstration programs;
- (3) purchase of equipment, including demonstration and educational equipment;
- (4) grants made to underground water conservation districts for the purchase of equipment under programs established by Subchapter H of this chapter;
- (5) research in water utilization and conservation including artificial recharge and secondary recovery of underground water;
- (6) desalinization;
- (7) weather modification;
- (8) technical assistance programs for developing on-farm soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts, as provided by Subchapter H, Chapter 201, Agriculture Code;
- (9) research and demonstration relating to the production of native and low-water-use plants and water-efficient crops;
- (10) a pilot program for low-interest loans for the purchase of agricultural water conservation systems established by Subchapter I of this chapter; and
- (11) research, demonstration, and education relating to brush control.

**Sec. 15.435. GUIDELINES.** (a) In using money provided to the agency under this section, the agency shall assure that:

- (1) the use of the funds will promote agricultural soil and water conservation;
- (2) the expenditures are made in compliance with the constitution, this code, other laws of this state, rules of the agency providing the money, and legislative appropriations; and
- (3) priority in expenditure of the funds will be given to those areas of the state that have the most critical water conservation needs and to the activities that will be most likely to produce substantial agricultural soil and water conservation.

(b) Each agency shall adopt rules to guide it in carrying out this subchapter.

**Sec. 15.436. TRANSFER OF MONEY.** In the General Appropriations Act, the legislature may transfer money from the fund to the agricultural soil and water conservation fund.

[Sections 15.437 to 15.470 reserved for expansion]

#### **SUBCHAPTER H. GRANTS FOR EQUIPMENT PURCHASES**

**Sec. 15.471. GRANTS; PURPOSES.** The board may make grants of money to underground water conservation districts and to other districts created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution, in which there is significant irrigation from surface water or groundwater as determined by the board for purchasing equipment required for measurement and evaluation of equipment.

**Sec. 15.472. RULES.** The board shall adopt rules establishing procedures for submitting and considering applications for grants under this subchapter.

**Sec. 15.473. CONSIDERATIONS IN MAKING GRANTS.** (a) In passing on an application for a grant, the board shall consider:

- (1) the degree to which the district submitting the application has utilized other available resources to finance the use for which application is being made;
- (2) the willingness and ability of the district to raise revenue;
- (3) the district's commitment to water conservation; and
- (4) the benefits that will be gained by making the grant.

(b) In making a grant under this subchapter, the board shall make a grant only if it finds that the grant funds to be made available will supplement rather than replace money to be made available by the district receiving the grant.

[Sections 15.474 to 15.530 reserved for expansion]

#### **SUBCHAPTER I. PILOT PROGRAM FOR LOW INTEREST LOANS FOR AGRICULTURAL WATER CONSERVATION EQUIPMENT**

**Sec. 15.531. DEFINITION.** In this subchapter, "lender" means a state soil and water conservation district under Chapter 201, Agriculture Code, or an underground water conservation district created under Article XVI, Section 59, of the Texas Constitution.

**Sec. 15.532. USE OF FUNDS.** The board may use money made available for these purposes, not to exceed \$5 million, to make loans to lenders and guarantees of loans as provided by this subchapter for use in making conservation loans. The money may be used only during the state fiscal years 1986 and 1987.

**Sec. 15.533. APPLICATION.** A lender that desires to obtain a loan under this subchapter shall file with the executive director an application in the manner and in the form provided by board rules.

**Sec. 15.534. APPROVAL OF APPLICATION AND LOAN AGREEMENT.** (a) After the board considers an application from a lender, if the board finds that the lender is able to make conservation loans to eligible borrowers and that the lender agrees to comply with rules adopted by the board under this subchapter, the board shall approve the loan if money is available.

(b) On approving a loan to a lender, the board shall enter into a loan agreement with the lender.

**Sec. 15.535. TERMS OF LENDER LOAN AGREEMENTS.** A loan agreement with a lender must include:

- (1) authorization for the lender to charge its borrower an amount up to 2-1/2 percent of the amount of a conservation loan to cover loan fees and charges of the lender;
- (2) authorization for the lender to reinvest unallocated loan funds in short-term accounts or other obligations, provided that the reinvestment does not interfere with the lender's ability to make the funds available for conservation loans; and
- (3) any other standards that the board considers necessary.

**Sec. 15.536. INTEREST RATE ON LENDER LOANS.** The board shall charge the same interest rate on each loan to a lender as is being charged on loans of financial assistance under Subchapter B of this chapter at the time the loan to the lender is made.

**Sec. 15.537. OTHER PURPOSES FOR CONSERVATION LOANS.** A lender may use loan funds to make conservation loans for:

- (1) capital equipment or materials composing an irrigation water delivery and application mechanism;
- (2) capital equipment or materials required for physical conversion of an existing irrigation water delivery and application system to an approved system; and
- (3) associated labor, preparation, and installation costs.

**Sec. 15.538. DEFAULT AND FORECLOSURE.** (a) In the event of a default in payment of a conservation loan made by a lender or the failure of the borrower to perform any of the terms or conditions of the conservation loan agreement, the lender is responsible for foreclosure under the conservation loan agreement.

(b) Foreclosure under a conservation loan agreement shall be accomplished in the manner provided by law for foreclosure of similar loan agreements made by private lending institutions and by the conservation loan agreement.

(c) The lender is responsible for liquidation of any collateral provided under the conservation loan agreement and shall sell the collateral on terms and subject to procedures that it follows in liquidating other collateral.

**Sec. 15.539. STATE GUARANTEE.** The state guarantees to each lender that in the event of default of a conservation loan made by a lender with money from the state, the state will assume and pay 50 percent of the amount that remains due and payable under the default after all collateral for the conservation loan is liquidated.

*Sec. 15.540. RESERVE FUND.* The conservation loan account is created in the Texas Water Development Fund and the department shall deposit in that account a portion of the amounts appropriated to the agricultural soil and water conservation fund that is sufficient to provide a reserve to pay the state's portion of any defaults under Section 15.538 of this code.

*Sec. 15.541. RULES.* The board may adopt necessary rules to carry out this subchapter.

*Sec. 15.542. REPORTS TO LEGISLATURE.* (a) Before January 1, 1987, and before January 1, 1989, the board shall prepare and issue reports to the legislature on the progress of the pilot program under this subchapter.

(b) The report must include:

- (1) a discussion of the operation of the pilot program;
- (2) the experience of the program with defaults on conservation loans;
- (3) a discussion of problems with administration; and
- (4) the expected feasibility of and demand for an expanded conservation loan program.

*Sec. 15.543. AUTHORITY OF DISTRICTS.* A soil and water conservation district or underground water conservation district defined as a lender under this subchapter may borrow money from the board and may make loans as provided by this subchapter. The district may adopt necessary rules to carry out this subchapter.

**SECTION 3.02.** Chapter 201, Agriculture Code, is amended by adding Subchapter H to read as follows:

#### **SUBCHAPTER H. TECHNICAL ASSISTANCE PROGRAM FOR SOIL AND WATER CONSERVATION LAND IMPROVEMENT MEASURES**

*Sec. 201.201. CREATION OF PROGRAM.* A technical assistance program for soil and water conservation land improvement measures is created and shall be administered by the State Soil and Water Conservation Board.

*Sec. 201.202. USE OF FUNDS.* (a) The State Soil and Water Conservation Board shall use money from the agricultural soil and water conservation fund for providing technical assistance to landowners and operators for soil and water conservation land improvement measures and soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts.

(b) The board shall designate priorities among the various land improvement measures, including:

- (1) brush control;
- (2) forest improvement measures;
- (3) returning erosive cropland to pasture and other practices that maximize water conservation;
- (4) increasing water use efficiency;
- (5) increasing water quality;
- (6) reducing erosion; and
- (7) maximizing public benefits.

*Sec. 201.203. DESIGNATION OF LOCAL DISTRICTS.* (a) The State Soil and Water Conservation Board shall designate particular soil and water conservation districts to administer certain programs.

(b) Before a local soil and water conservation district is designated by the State Soil and Water Conservation Board, the district must provide evidence to the State Soil and Water Conservation Board that it is able to provide and to supervise necessary technical assistance to landowners and operators within its jurisdiction.

*Sec. 201.204. RULES.* The State Soil and Water Conservation Board may adopt necessary rules to carry out this subchapter.

#### **ARTICLE 4. PROTECTION OF BAYS AND ESTUARIES AND INSTREAM USES**

**SECTION 4.01.** Section 11.147, Water Code, is amended to read as follows:

*Sec. 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES AND INSTREAM USES.* (a) In this section, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries

of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(c) For the purposes of making a determination under Subsection (b) of this section, the commission shall consider among other factors:

(1) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in Section 11.149 of this code and other studies considered by the commission to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(2) the ecology and productivity of the affected bay and estuary system;

(3) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary system;

(4) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(5) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(6) for purposes of this section, the declarations as to preferences for competing uses of water as found in Sections 11.024 and 11.033, Water Code, as well as the public policy statement in Section 1.003, Water Code.

(d) In its consideration of an application to store, take, or divert water, the commission shall consider the effect, if any, of the issuance of the permit on existing instream uses and water quality of the stream or river to which the application applies.

(e) The commission shall also consider the effect, if any, of the issuance of the permit on fish and wildlife habitats.

(f) On receipt of an application for a permit to store, take, or divert water, the commission shall send a copy of the permit application and any subsequent amendments to the Parks and Wildlife Department. At its option, the Parks and Wildlife Department may be a party in hearings on applications for permits to store, take, or divert water. In making a final decision on any application for a permit, the commission, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, and testimony presented by the Parks and Wildlife Department and the department.

(g) The failure of the Parks and Wildlife Department to appear as a party does not relieve the commission of the requirements of this section.

**SECTION 4.02.** Chapter 11, Water Code, is amended by adding Sections 11.148 and 11.149 to read as follows:

**Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS.** (a) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the commission if the commission finds that an emergency exists and cannot practically be resolved in other ways.

(b) Before the commission suspends a permit under Subsection (a) of this section, it must give written notice to the Parks and Wildlife Department of the proposed suspension. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed suspension within 72 hours from such time and the commission shall consider those comments before issuing its order imposing the suspension.

(c) The commission may suspend the permit without notice to any other interested party other than the Parks and Wildlife Department as provided by Subsection (b) of this section. However, all affected persons shall be notified immediately by publication, and a hearing to determine whether the suspension should be continued shall be held within 15 days of the date on which the order to suspend is issued.

**Sec. 11.149. COLLECTION OF BAYS AND ESTUARIES DATA; CONDUCT OF STUDIES; AND ESTABLISHMENT OF BAYS AND ESTUARIES ADVISORY COUNCILS.** (a) The Parks and Wildlife Department and the department, shall have joint responsibility, in cooperation with other appropriate governmental agencies, to establish and maintain on a continuous basis a bay and estuary data collection program and shall conduct studies and analyses, to provide information necessary for water resources planning and management. Each agency shall designate an employee to share equally in the oversight of the program studies and analyses. Other responsibilities shall be divided between the Parks and Wildlife Department and the department to maximize present in-house capabilities of personnel and equipment and to minimize costs to the state. Each agency shall have reasonable access to all data, studies, analyses,

information, and reports produced by the other agency. The studies shall be completed no later than December 31, 1989. Publication of studies completed under this subsection shall be submitted for comment to both the department and the Parks and Wildlife Department.

(b) For purposes of guiding data collection and studies specified under Subsection (a) of this section, an advisory council may be established by the executive directors of the department and the Parks and Wildlife Department for each principal bay and estuary. Each advisory council shall be composed of representatives of the department, Parks and Wildlife Department, Texas Department of Health, General Land Office, one representative of commercial and recreational fishing and hunting groups, one representative of conservation groups, and representatives of conservation and reclamation districts or river authorities having responsibilities and operations in river basins or watersheds contributing to the bay or estuary. The advisory councils may develop recommendations to the executive directors and to entities and organizations having operational responsibilities or holding major water rights in the contributing watersheds regarding alternative water management methods that may be used in maintaining the sound environment of the bays and estuaries.

(c) The board may authorize the use of money from the research and planning fund established by Chapter 15 of this code to accomplish the purposes of this section. These funds shall be used by the department in cooperation with the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities, and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

**SECTION 4.03.** Chapter 15, Water Code, is amended by amending Section 15.304 and adding Section 15.3041 to read as follows:

**Sec. 15.304. PERMITS REQUIRED.** *Except as provided by Section 15.3041 of this code, the [The] board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.*

**Sec. 15.3041. RESERVATION AND APPROPRIATION FOR BAYS AND ESTUARIES AND INSTREAM USES.** *(a) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation under this chapter within 200 river miles from the coast, to commence from the mouth of the river thence inland, is appropriated to the Parks and Wildlife Department for use to make releases to bays and estuaries and for instream uses, and the commission shall issue permits for this water to the Parks and Wildlife Department under procedures adopted by the commission.*

*(b) The Parks and Wildlife Department in cooperation with the department shall manage this water for the purposes stated in this section.*

*(c) The Parks and Wildlife Department shall adopt necessary rules and shall enter into necessary memoranda of understanding with the department to provide necessary rules and procedures for managing the water and for release of the water for the purposes stated in this section.*

*(d) This section does not limit or repeal any other authority of or law relating to the department or the commission.*

*(e) Operating and maintenance costs for the percentage of annual firm yield appropriated to the Parks and Wildlife Department shall be paid by the local political subdivisions that are the project owners.*

**SECTION 4.04.** Chapter 16, Water Code, is amended by amending Section 16.133 and adding Section 16.1331 to read as follows:

**Sec. 16.133. PERMITS REQUIRED.** *Except as provided by Section 16.1331 of this code, the [The] board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.*

**Sec. 16.1331. RESERVATION AND APPROPRIATION FOR BAYS AND ESTUARIES AND INSTREAM USES.** *(a) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation under this chapter within 200 river miles from the coast, to commence from the mouth of the river thence inland, is appropriated to the Parks and Wildlife Department for use to make releases to bays and estuaries and for instream uses, and the commission shall issue permits for this water to the Parks and Wildlife Department under procedures adopted by the commission.*

*(b) The Parks and Wildlife Department in cooperation with the department shall manage this water for the purposes stated in this section.*

*(c) The Parks and Wildlife Department shall adopt necessary rules and shall enter into necessary memoranda of understanding with the department to provide necessary rules and procedures for managing the water and for release of the water for the purposes stated in this section.*

(d) *This section applies only to reservoirs and associated works on which construction begins on or after September 1, 1985.*

(e) *This section does not limit or repeal any other authority of or law relating to the department or the commission.*

(f) *Operating and maintenance costs for the percentage of annual firm yield appropriated to the Parks and Wildlife Department shall be paid by local political subdivisions that are the project owners.*

## ARTICLE 5. UNDERGROUND WATER CONSERVATION DISTRICTS

SECTION 5.01. Chapter 52, Water Code, is amended to read as follows:

### CHAPTER 52. UNDERGROUND WATER CONSERVATION DISTRICTS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Water Commission.
- (2) "Executive director" means the executive director of the Texas Department of Water Resources.
- (3) "District" means an underground water conservation district created under this chapter.
- (4) "Underground water" means water percolating below the surface of the earth and that is suitable for agricultural, gardening, domestic, or stock raising purposes, but does not include defined subterranean streams or the underflow of rivers.
- (5) "Underground water reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries and containing underground water that can be produced from a well at a rate of 25,000 ~~[150,000]~~ gallons or more a day.
- (6) "Subdivision of an underground water reservoir" means a reasonably definable part of an underground water reservoir in which the underground water supply will not be unreasonably affected by withdrawing water from any part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.
- (7) "Waste" means:
  - (A) withdrawal of underground water from an underground water reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
  - (B) the flowing or producing of wells from an underground water reservoir if the water produced is not used for a beneficial purpose;
  - (C) escape of underground water from an underground water reservoir to any other reservoir that does not contain underground water;
  - (D) pollution or harmful alteration of underground water in an underground water reservoir by salt water, other deleterious matter admitted from another stratum or from the surface of the ground; or
  - (E) wilfully or negligently causing, suffering, or permitting underground water to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well.
- (8) "Use for a beneficial purpose" means use for:
  - (A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
  - (B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
  - (C) any other purpose that is useful and beneficial to the user.
- (9) ~~["Segregated irrigated area" means an irrigated area separated from other irrigated areas by at least five miles of unirrigated land.~~
- ~~[(40)]~~ "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.
- (10) "Board" means the board of directors of a district.
- (11) "Director" means a member of a board.
- (12) "Critical area" means an area designated and delineated by the department and commission under Subchapter C of this chapter as an area that is experiencing or that is expected to experience critical groundwater problems.
- (13) "Department" means the Texas Department of Water Resources.

Sec. 52.002. OWNERSHIP OF UNDERGROUND WATER. The ownership and rights of the owner of the land and his lessees and assigns in underground water are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owner or his lessees and assigns of the ownership or rights, subject to the rules promulgated by a district under this chapter.

Sec. 52.003. SURFACE WATER LAWS NOT APPLICABLE. The laws and administrative rules relating to the use of surface water do not apply to underground water.

Sec. 52.004. APPLICATION OF CHAPTER AND DISTRICT RULES. The provisions of this chapter and the rules adopted by a district under this chapter apply only *within the boundaries of the district* ~~in the area designated by the commission as an underground water reservoir or a subdivision of an underground water reservoir over which the district is organized~~.

[Sections 52.005 to 52.020 reserved for expansion]

#### **SUBCHAPTER B. CREATION OF DISTRICTS GENERALLY** ~~[DISTRICT]~~

Sec. 52.021. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the underground water of underground water reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water therefrom, consistent with the objective of Article XVI, Section 59, of the Texas Constitution, underground water conservation districts may be created as provided by this *subchapter* ~~chapter~~.

Sec. 52.022. METHOD OF CREATING DISTRICT. Except as otherwise provided by this subchapter, the provisions in Chapter 51 of this code for creating water control and improvement districts apply to the creation of underground water conservation districts *under this subchapter* to the extent that those provisions may be made applicable.

Sec. 52.023. BOUNDARIES OF DISTRICT. *A* ~~(a) The commission may not consider a petition for the creation of a district unless the proposed boundaries of the district are coterminous with the boundaries of an underground water reservoir or a subdivision of an underground water reservoir, as previously designated by the commission.~~

~~(b) Subject to Subsection (a) of this section, a~~ district may include all or part of one or more counties, cities, districts, or other political subdivisions.

Sec. 52.024. DESIGNATION OF MANAGEMENT AREAS ~~[RESERVOIRS AND SUBDIVISIONS]~~. (a) On its own motion from time to time, or on receiving a petition ~~[conforming to the requirements of Section 51.013 of this code]~~, the commission, after notice and hearing as provided by Sections 51.018 and 51.027-51.029 of this code, shall designate underground water management areas. *Each management area shall be designated with the objective of providing the most suitable area for the management of the underground water resources of the part of the state in which the district is to be located. To the extent feasible, the management area shall coincide with the boundaries of an underground water reservoir or a subdivision of an underground water reservoir. However, the commission also may consider other factors, including the boundaries of political subdivisions. The size and configuration of a management area shall be appropriate for the performance of the duties provided by Subchapter E of this chapter* ~~[reservoirs and subdivisions of underground water reservoirs]~~.

(b) On the request of any person interested in the petition, or on the request of the commission, the executive director shall prepare available evidence relating to the *configuration of an underground water management area* ~~[existence, area, and characteristics of the reservoir or subdivision]~~. Before making the designation, the commission shall consider the evidence prepared by the executive director and other evidence submitted at the hearing.

(c) The commission may alter the boundaries of designated *management areas* ~~[underground water reservoirs and subdivisions]~~ as required by future conditions and as justified by factual data. However, an alteration of boundaries does not invalidate the previous creation of any district.

(d) When the commission has designated the boundaries of a *management area* ~~[subdivision]~~ as provided by this section, its findings on the location of the boundaries ~~[the questions of "reasonableness" and "affect," as referred to in Section 52.001(5) of this code]~~, and all other questions essential to the existence of a *management area* ~~[subdivision]~~ are conclusive and final unless a suit is brought under Section 52.401 ~~[52.301]~~ of this code within the 30-day period immediately following the date on which the commission enters its order.

Sec. 52.025. FINDINGS. (a) If the commission finds that *a* ~~the~~ district is feasible and practicable, that it would be a benefit to land in the district, and that it would be a public benefit or utility, the commission shall make these findings and grant the petition.

(b) If the commission finds that the district is not feasible and practicable, that it would not be a benefit to land in the district, that it would not be a public benefit or utility, or that it is not needed, the commission shall refuse to grant the petition.



Sec. 52.026. *APPLICATION OF SUBCHAPTER.* The provisions of this subchapter apply only to districts created under this subchapter ~~[SEGREGATED IRRIGATED AREA. A district shall include no segregated irrigated area unless a majority of the qualified electors residing in the segregated irrigated area and voting at the election favor inclusion of the area within the district].~~

[Sections 52.027 to 52.050 reserved for expansion]

### SUBCHAPTER C. CREATION OF DISTRICTS IN CRITICAL AREAS

Sec. 52.051. *PURPOSE.* The legislature recognizes that certain areas of the state are experiencing and will experience in the future critical underground water problems including water shortages, land subsidence, underground water contamination including saltwater intrusion, and waste of underground water. To assure the availability of a clean and adequate supply of underground water and to adequately control land subsidence problems and waste of underground water, it is the purpose of the legislature to establish a procedure through which the department can monitor and study on a continuing basis the underground water situation within the state and work within critical areas to solve existing or potential problems. It is also the purpose of the legislature to assure that the local areas will determine the best methods for handling underground water problems either through the creation of underground water conservation districts or through other means available to each individual and local governmental entity.

Sec. 52.052. *MONITORING UNDERGROUND WATER.* The department, on a continuing basis, shall monitor the underground water situation within the state and shall make available to all districts information that is acquired by the department in its monitoring activities.

Sec. 52.053. *IDENTIFYING, DESIGNATING, AND DELINEATING CRITICAL AREAS.* (a) As part of its monitoring activities, the department shall identify those areas of the state that are experiencing or that are expected to experience, based on information available to the department, within the immediately following 20-year period, critical underground water problems including shortages of surface or underground water, land subsidence resulting from underground water withdrawal, and contamination of underground water supplies.

(b) To carry out this section, the department may make necessary studies, hold hearings, solicit and collect information, and use information already prepared by the department for other purposes.

(c) If through its monitoring activities the department identifies an area of the state as an area with critical underground water problems, the department shall create and appoint to an advisory committee persons familiar with the underground water problems of the area including representatives of those economic sectors that are significant water users in the area being studied.

(d) The regional management advisory committee shall assist the department in evaluating information relating to underground water in the area.

(e) The department shall prepare a report on underground water conservation and protection in the area.

(f) The report prepared by the department under this section shall:

(1) provide a technical assessment of information available on underground water resources in the area to be covered by the plan;

(2) evaluate the significance of groundwater problems within the area including problems with water quality;

(3) assess the efficiency of existing institutions regulating underground water use;

(4) assess the administrative feasibility and economic impact of restricting withdrawals of underground water;

(5) assess potential methods of increasing aquifer recharge;

(6) assess the potential for additional underground water development;

(7) assess the potential and need for conjunctive use of underground water and surface water;

(8) evaluate and recommend potential control strategies for protecting underground water supplies on a regional basis;

(9) make recommendations as to whether an underground water conservation district would be a benefit to the area and if so what the boundaries of the district should be; and

(10) assess the alternative methods of financing the district.

(g) In preparing the report, the department shall seek the advice and comments of the management advisory committee and shall administer this section so as to utilize the underground and surface water management studies and plans developed by the municipalities, special districts, and other governmental entities within the regions.

(h) The department shall complete the report within a reasonable time.

(i) If the report recommends the creation of a district under this chapter, the department shall call and hold a hearing within the boundaries of the area identified to provide information to local governmental officials and citizens relating to the critical underground water situation within the area to present the results of the plan and to determine if the area should be designated as a critical area. At the hearing, the department through its professional staff shall present detailed information relating to the underground water situation within the identified area and the procedures, administration, powers, duties, and financing of underground water districts under this chapter. Also, at the hearing, the department shall receive evidence and testimony from local governmental officials and citizens of the area relating to the underground water situation in the area and the potential economic, political, geological, and hydrological impact of the creation of a district under this chapter on the persons and land located in the area.

(j) In addition to the requirements of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the department shall give written notice of the date, time, place, and purpose of the hearing to the governing body of each county, city, and district created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution, all or part of which is located in the area identified by the department, and shall publish notice of the date, time, place, and purpose of the hearing in one or more newspapers in each county all or part of which is located in the area identified by the department. The notice must be published not less than 10 days before the date of the hearing.

(k) Within 30 days after the conclusion of the hearing, the department shall consider all of the information relating to the identified area including information compiled by the department and information presented at the hearing and shall issue an order prescribing whether the area should be designated as a critical area and, if so, delineating the boundaries of the critical area.

(l) The critical area shall be designated with the objective of providing the most suitable area for management of the underground water resources of the part of the state in which the problem is located. To the extent feasible, the critical area shall coincide with the boundaries of an underground water reservoir or a subdivision of an underground water reservoir. However, the department also may consider other factors, including the boundaries of political subdivisions. The size and configuration of a critical area shall be appropriate for the performance of the duties provided by Subchapter E of this chapter.

(m) If an area is designated and delineated as a critical area, the department shall prepare and submit to the commission a written report that includes the delineation of the boundaries of the critical area, the reasons for designating the area as a critical area, the information supporting the findings, the recommendation that a district be created in the critical area or that the critical area be added to an existing district, and any other information that the department considers helpful to the commission. The report also shall recommend the method of election or appointment of the board of directors for the proposed district.

(n) An order issued under this section may not be appealed.

**Sec. 52.054. NOTICE AND HEARING.** (a) On receiving a report from the department, the commission shall call a hearing to consider the report and to determine if the creation of a district is feasible and necessary.

(b) In addition to the notice requirements of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and department rules, the commission shall give written notice of the date, time, place, and purpose of the hearing to the governing body of each county, city, and district created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution, all or a part of which is located in the critical area. The notice must be given before the 10th day preceding the date set for the hearing.

(c) The commission shall include with the notice under Subsection (b) of this section a brief summary of the department's report designating the area as a critical area including a description of the delineated boundaries, the reasons that the area has been designated as a critical area, the benefits, powers, and duties that may be exercised by a district, and any other information the commission considers necessary.

(d) The commission also shall include in its notice under Subsection (b) of this section notice that the full department report is available at the commission's main office in Austin, Texas, and that the report is available for inspection during regular business hours.

(e) The commission shall publish notice of the date, time, place, and purpose of the hearing in one or more newspapers with general circulation within the boundaries of the critical area. The notice must be published at least one time before the 10th day preceding the date of the hearing.

**Sec. 52.055. TESTIMONY, EVIDENCE, AND CONSIDERATIONS.** (a) At the hearing, the commission shall hear testimony and receive evidence relating to whether a district should be created to solve the problems of the critical area and, if so, whether the boundaries as delineated by the department should be adopted or changed in any manner.

(b) *At the conclusion of the hearing and before issuing any order, the commission shall consider the department's report and supporting information and the testimony and evidence received at the hearing. If the commission considers further information necessary, it may request it from any source.*

(c) *In making its decision, the commission shall consider:*

(1) *the economic, political, geological, and hydrological impact of the creation of a district on the persons and the land located in the critical area;*

(2) *whether the land and property within the boundaries of the proposed district will benefit from the creation of the district;*

(3) *whether there is a public need for the district; and*

(4) *whether the creation of the district would further the public welfare.*

**Sec. 52.056. COMMISSION ORDER.** (a) *At the conclusion of its hearing and considerations, the commission shall issue an order stating its findings and conclusions.*

(b) *If the commission finds that the land and other property in the critical area would benefit from the creation of a district, that there is a public need for the district, and that district creation would further the public welfare, the commission shall issue an order proposing the creation of a district, delineating the boundaries of the proposed district, directing that an election be held within the boundaries of the proposed district to determine if the district will be created, and appointing five persons to serve as temporary directors for the proposed district.*

(c) *If the commission fails to find that the district would be a benefit to the land and other property within the critical area, that there is a public need for the district, or that creation of the district will further the public welfare, the commission shall issue an order stating that a district should not be created within the boundaries of the critical area.*

(d) *If the commission authorizes creation of a district under Subsection (b) of this section, it may alter the boundaries delineated by the department as the critical area. Any change in the boundaries must be based on testimony, evidence, data, and other information available to the department.*

(e) *An order of the commission issued under this section may not be appealed.*

**Sec. 52.057. TEMPORARY DIRECTORS.** (a) *If the commission orders an election to be held to determine whether a district should be created within the critical area, it shall appoint five temporary directors who shall serve until the initial directors are elected and have qualified for office or until the voters fail to approve creation of the district.*

(b) *Within 15 days after an individual is appointed to be a temporary director, the individual shall take the oath of office.*

(c) *If an appointee of the commission fails to qualify or if a vacancy occurs in the office of temporary director, the commission shall appoint an individual to fill the vacancy.*

(d) *As soon as all temporary directors have qualified, the directors shall meet and elect a chairman and vice-chairman from among their membership. The chairman shall preside at all meetings of the board and in his absence, the vice-chairman shall preside.*

**Sec. 52.058. CREATION ELECTION.** (a) *Within 30 days after all temporary directors have been appointed and have qualified, the temporary directors shall meet and shall call an election to be held within the boundaries of the proposed district to approve the creation of the district.*

(b) *In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of the rural areas for conveniently located polling places.*

(c) *The temporary directors shall publish notice of the election at least one time in a newspaper or newspapers that have general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.*

(d) *The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the \_\_\_\_\_ Underground Water Conservation District."*

(e) *Immediately after the election, the presiding judge of each polling place shall deliver the return of the election to the temporary board, and the board shall canvass the returns and declare the result.*

(f) *If a majority of the votes cast at the election favor the creation of the district, the temporary board shall declare the district created and shall enter the results in its minutes. If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the results in its minutes. The temporary board shall file a copy of the election results with the department.*

(g) *If the proposition to create a district is defeated, an election to create a district in the area may not be called during the 12-month period immediately following the date on which the election on the proposition was held.*

**Sec. 52.059. BOND AND TAX PROPOSITION.** (a) At an election to create a district, the temporary directors may include a proposition for the issuance of bonds, the levy of taxes to pay for all or part of the bonds, and the levy of a maintenance tax at a rate not to exceed 50 cents on each \$100 of assessed valuation.

(b) The board shall include in any bond and tax proposition the maximum amount of bonds to be issued and their maximum maturity date.

**Sec. 52.060. ADDING CRITICAL AREA TO EXISTING DISTRICT.** (a) If land in a critical area is located adjacent to one or more existing districts, the commission, instead of issuing an order under Section 52.056(b) of this code, may issue an order recommending that the critical area be added to the existing district designated by the commission, delineating the boundaries of the critical area proposed to be added to the existing district, and ordering the board of the existing district to call and hold on the same day separate elections within the existing district and within the critical area to determine whether the critical area will be added to the district. In its order, the commission must find that the land and other property in the critical area and the land in the existing district will benefit from the addition of the area, that there is a public need to add the critical area to the existing district, and that addition of the land to the existing district would further the public welfare.

(b) If the department recommends that the critical area be added to an existing district in its report under Section 52.053 of this code or if the commission, on receiving that report, considers it possible to add the critical area to an adjacent existing district, the commission shall give notice as provided by Section 52.054(b) of this code to the board of the existing district recommended by the department or considered by the commission to possibly serve the area and to any other existing districts adjacent to the critical area.

(c) The commission shall submit a copy of the order issued under this section to the board of the district to which it is recommended that the critical area be added.

(d) Within 10 days after receiving a copy of the commission's order, the board shall call on the same day separate elections within the existing district and within the critical area as delineated by the commission to determine if the critical area will be added to the district. In the order calling the election, the board shall designate election precincts and polling places for the elections.

(e) The board shall give notice of the elections and the proposition to be voted on. The board shall publish notice of the elections at least one time in one or more newspapers with general circulation within the boundaries of the existing district and the critical area. The notice must be published before the 30th day preceding the date set for the elections.

(f) The ballots for the elections shall be printed to provide for voting for or against the proposition: "The inclusion of \_\_\_\_\_ (briefly describe critical area) in the \_\_\_\_\_ District and assumption by the described area of a proportional share of the outstanding indebtedness of the district."

(g) Immediately after the elections, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the existing district and the election within the critical area separately and declare the results. If a majority of the voters in the existing district and a majority of the voters in the critical area voting on the proposition vote in favor of the proposition, the board shall declare that the critical area is added to the district. If a majority of the voters in either or both the existing district and the critical area voting on the proposition vote against adding the critical area to the district, the board shall declare that the critical area is not added to the district. The board shall file a copy of the election results with the department.

(h) If the voters approve adding the critical area to the district, the board of the district to which the critical area is added shall provide for the critical area reasonable representation on the board that is compatible with the district's existing scheme of representation.

(i) If the proposition is defeated, no further elections may be called by the board to add the critical area to the district unless the procedures provided by this subchapter for designating and delineating critical areas and ordering that an election be held are followed in their entirety.

**Sec. 52.061. COSTS OF ELECTIONS.** (a) The costs of an election to create a district at which a district is authorized to be created shall be paid by the district.

(b) The costs of an election to add a critical area to an existing district at which the voters approve adding the critical area to the district shall be paid by the existing district.

(c) If at an election to create a district or add a critical area to an existing district the voters do not approve the proposition and the district is not created or the critical area is not added to the existing district, the commission shall pay the costs of the election.

**Sec. 52.062. EXEMPTION FROM SUBCHAPTER.** Except for Sections 52.060 and 52.061 of this code, this subchapter does not apply to the following districts or land within those districts:

(1) a district created under Subchapter B, Chapter 52, of this code;

(2) the Edwards Underground Water District created by Chapter 99, Acts of the 56th Legislature, Regular Session, 1959;

(3) the North Plains Ground Water Conservation District No. Two created by Chapter 498, Acts of the 54th Legislature, Regular Session, 1955;

(4) the Ground Water Conservation District No. 3, South of the Canadian River confirmed by Chapter 19, Acts of the 55th Legislature, Regular Session, 1957;

(5) the Glasscock County Underground Water Conservation District created by Chapter 489, Acts of the 67th Legislature, Regular Session, 1981;

(6) the Dallam County Underground Water Conservation District No. 1 confirmed by Chapter 91, Acts of the 56th Legislature, Regular Session, 1959;

(7) the High Plains Underground Water Conservation District No. 1 confirmed by Chapter 10, Acts of the 53rd Legislature, Regular Session, 1953;

(8) the Harris-Galveston Coastal Subsidence District created by Chapter 284, Acts of the 64th Legislature, Regular Session, 1975;

(9) the Hickory Underground Water District;

(10) the Hudspeth County Underground Water District;

(11) the Evergreen Underground Water Conservation District created by Chapter 197, Acts of the 59th Legislature, Regular Session, 1965;

(12) the Plateau Underground Water Conservation and Supply District created by Chapter 517, Acts of the 59th Legislature, Regular Session, 1965; or

(13) a district created under Article XVI, Section 59, of the Texas Constitution, by the 69th Legislature.

Sec. 52.063. **STATE-OWNED LAND.** Subject to resolution of constitutional and other legal issues, if state-owned land or a portion of state-owned land is located in a critical area, the state agency that has management and control over that land under the constitution or by statute may elect by written agreement with the commission and the district to include the state-owned land in the district. The agreement shall be entered into as provided by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) and may include provisions for the payment by the state agency of reasonable fees to the district. If the state does not elect to enter into the agreement to include the state-owned land in the district, the state agency must establish an underground water management plan that will conserve, protect, and prevent the waste of underground water on that state-owned land.

[Sections 52.064 to 52.100 reserved for expansion]

#### SUBCHAPTER D. [G:] ADMINISTRATIVE PROVISIONS

Sec. 52.101 ~~[52.051]~~. **ADMINISTRATIVE AND PROCEDURAL PROVISIONS.** Except as otherwise provided by this chapter, the administrative and procedural provisions of Chapter 51 of this code apply to districts created under this chapter.

Sec. 52.102 ~~[52.052]~~. **ELECTION OF DIRECTORS: PRECINCT METHOD.** The directors of the district shall be elected according to the precinct method as prescribed by Chapter 12, page 1105, Special Laws, Acts of the 46th Legislature, Regular Session, 1939 ~~[Chapter 51 of this code]~~. However, if any part of a municipal corporation is a part of one precinct, then no part of the municipal corporation shall be included in another precinct, except that a municipal corporation having a population of more than 200,000 may be divided between two precincts. In a multicounty district, not more than two of the five precincts may include the same municipal corporation or part of the same municipal corporation.

Sec. 52.103. **NOTIFICATION OF COUNTY CLERK.** Within 30 days following the creation of a district or any amendment to the boundaries of a district, the board of directors shall file with the county clerk of each county in which all or part of the district is located a certified copy of the description of the boundaries of the district. Each county clerk shall record the certified copy of the boundaries in the property records of that county.

[Sections 52.104 to 52.150 ~~[52.053 to 52.100]~~

reserved for expansion]

#### SUBCHAPTER E. [D:] POWERS AND DUTIES

Sec. 52.151 ~~[52.101]~~. **RULE-MAKING POWER.** A district may make and enforce rules to provide for conserving, preserving, protecting, recharging, controlling subsidence, and preventing waste of the underground water of an underground water reservoir or its subdivisions and to carry out the powers and duties provided by this chapter.

Sec. 52.152 ~~[52.102]~~. **RULES: PUBLICATION, EFFECTIVE DATE.** A brief resume of each rule shall be published once a week for two consecutive weeks in one or more newspapers to

give circulation within the district. No rule may be made effective until at least 14 days have elapsed after the date of the first publication.

Sec. 52.153 ~~[52-103]~~. **ENFORCEMENT OF RULES.** The district may enforce *this chapter* and its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

Sec. 52.154. **RULES REASONABLE; APPEAL OF RULES.** (a) *The rules adopted by a district must be reasonable.*

(b) *A person may appeal the reasonableness and validity of a rule adopted by a district as provided by Subchapter I of this chapter.*

Sec. 52.155 ~~[52-104]~~. **IMPROVEMENTS AND FACILITIES.** The district may:

- (1) acquire land to erect dams or to drain lakes, draws, and depressions;
- (2) construct dams;
- (3) drain lakes, depressions, draws, and creeks; ~~[and]~~
- (4) install pumps and other equipment necessary to recharge ~~an [the]~~ underground water reservoir or its subdivision; *and*
- (5) *provide necessary facilities for the purchase, sale, transportation, and distribution of water.*

Sec. 52.156 ~~[52-105]~~. **PURCHASE, SALE, TRANSPORTATION, AND DISTRIBUTION OF WATER ~~[PROHIBITED]~~.** A ~~[No]~~ district may purchase, sell, transport, and ~~[or]~~ distribute surface water or underground water for any purpose.

Sec. 52.157. **EMINENT DOMAIN.** (a) *Except as provided by Subsection (b) of this section, a district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property located inside the district if the property interest is necessary to the exercise of the authority conferred by this chapter.*

(b) *The power of eminent domain authorized in this section may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.*

(c) *The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.*

(d) *In a condemnation proceeding brought by a district, the district is not required to pay in advance or give bond or other security for costs in the trial court, to give bond for the issuance of a temporary restraining order or a temporary injunction, or to give bond for costs or supersedeas on an appeal or writ of error.*

(e) *In exercising the power of eminent domain, if the district requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission or distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities after deducting the net salvage value derived from the old facility.*

Sec. 52.158 ~~[52-106]~~. **PREFERENTIAL-USE PROVISIONS INAPPLICABLE.** The preferential-use provisions of Section 51.184 of this code are not applicable to underground water conservation districts.

Sec. 52.159 ~~[52-107]~~. **ENGINEERING SURVEYS.** The district may employ registered professional engineers to make surveys of the underground water reservoir or subdivision and surveys of the facilities for development, production, *transportation, distribution,* and use of the water, in order to determine the quantity of water available for production and use and to determine the improvements, development, and recharging needed by a ~~[the]~~ reservoir or its subdivision.

Sec. 52.160 ~~[52-108]~~. **PLANNING.** (a) The district *shall* ~~[may]~~ develop comprehensive plans for the most efficient use of the underground water ~~[in the underground water reservoir or its subdivision]~~ and for controlling and preventing waste of underground water and for controlling and preventing subsidence.

(b) The district shall specify in the plans, in as much detail as practicable, the acts, procedure, performance, and avoidance that are or may be necessary to effect the plans, including specifications.

Sec. 52.161 ~~[52-109]~~. **RESEARCH PROJECTS.** The district may carry out research projects, develop information, and determine limitations which should be made on withdrawing underground water ~~[from the underground water reservoir or its subdivision]~~.

Sec. 52.162 ~~[52-110]~~. **COLLECTION OF INFORMATION.** The district may collect information regarding the use of underground water and the practicability of recharging an underground water ~~[the]~~ reservoir ~~[or its subdivision]~~.

Sec. 52.163 ~~[52.111]~~. PUBLICATION OF PLANS AND INFORMATION. The district may publish its plans and the information it develops, bring them to the attention of the users of underground water in the district, and encourage the users to adopt and use them.

Sec. 52.164 ~~[52.112]~~. RECORDS AND REPORTS. The district *shall* ~~[may]~~ require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of underground water ~~[from the underground water reservoir or its subdivision]~~.

Sec. 52.165 ~~[52.113]~~. DRILLERS' LOGS. The district *shall* ~~[may]~~ require that accurate drillers' logs be kept of water wells and that copies of drillers' logs and electric logs be filed with the district.

Sec. 52.166 ~~[52.114]~~. PERMITS FOR WELLS. *Except as provided by Section 52.170 of this code the* ~~[The]~~ district *shall* ~~[may]~~ require permits for the drilling, equipping, or completing of wells, or for substantially altering the size of wells or well pumps, or for all of these operations. Permits may be issued subject to the rules made under Section 52.169 ~~[52.117]~~ of this code and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to conserve the underground water, prevent waste, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, ~~[or]~~ lessen interference between wells, *or control and prevent subsidence*.

Sec. 52.167 ~~[52.115]~~. PERMIT: APPLICATION AND HEARING. The district shall promptly consider and pass on each application for a permit. If, within 20 days after the date it is submitted, an application has not been passed on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application. A hearing shall be held within 30 days after the setting of the date and the district shall act on the application within 10 days after the date of the hearing.

Sec. 52.168 ~~[52.116]~~. DRILLING, ETC., WITHOUT PERMIT. Except as provided by Section 52.170 ~~[52.118]~~ of this code, no person, firm or corporation may begin to drill a well in the district, or substantially alter the size of a well or pump, which well could ~~[reasonably be expected to]~~ produce 25,000 ~~[more than 100,000]~~ gallon or more of *underground* water a day from a ~~[the]~~ reservoir or subdivision, without first obtaining a permit from the district.

Sec. 52.169 ~~[52.117]~~. REGULATION OF SPACING AND PRODUCTION. In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, or to prevent waste, the district may provide for the spacing of water wells and may regulate the production of wells.

Sec. 52.170 ~~[52.118]~~. EXCEPTIONS; LIMITATIONS. (a) The district may not require a permit for:

(1) the drilling or producing of a well drilled, completed, and equipped so that it will not produce more than 25,000 ~~[100,000]~~ gallons of underground water a day;

(2) the drilling or alteration of the size of a well or to restrict the production of a well if the water produced or to be produced from the well is used or to be used to supply the domestic needs of 10 or fewer households and a person who is a member of each household is either the owner of the well, a person related to the owner or a member of the owner's household within the second degree by consanguinity, or an employee of the owner;

(3) the drilling or alteration of the size of a well or to restrict the production from the well if the water produced or to be produced from the well is used or to be used to provide water for feeding livestock and poultry connected with farming, ranching, or dairy enterprises;

(4) water wells to supply water for hydrocarbon production activities, regardless of whether those wells are producing, that are associated with any well permitted by the Railroad Commission of Texas drilled before the effective date of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985; or

(5) jet wells used for domestic needs.

(b) The board shall adopt rules determining the applicability of Subsection (a)(3) of this section to facilities used primarily for feeding livestock.

(c) ~~[(b)]~~ The district shall not deny the owner of a tract of land, or his lessee, who has no well ~~[capable of]~~ producing more than 25,000 ~~[100,000]~~ gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce underground water from his land, subject to the rules of the district.

(d) ~~[(c)]~~ The district may not restrict the production of any well that produces 25,000 ~~[less than 100,000]~~ gallons or less a day.

(e) ~~[(d)]~~ Nothing in this chapter applies to wells drilled for oil, gas, sulphur, or brine, or for core tests, or for injection of gas, salt water, or other fluid, or for any other purpose, under permits issued by the ~~[Texas]~~ Railroad Commission of Texas. The district *may* ~~[shall]~~ not

require a permit to drill a well to supply water for drilling any of these wells permitted by the [Texas] Railroad Commission of Texas. When the well ceases to be used for these purposes, it may then be used as an ordinary water well if it meets the spacing and other rules of the district; and its use is subject to the rules of the district.

(f) ~~(e)~~ Water wells exempted under this section shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of underground water from an underground water reservoir to any reservoir not containing underground water and to prevent the pollution or harmful alteration of the character of the water in any underground water reservoir.

(g) Water wells exempted under this section shall be registered with the district in which they are located and shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of underground water from an underground water reservoir to any reservoir not containing underground water and to prevent the pollution or harmful alteration of the character of the water in any underground water reservoir.

(h) A district created under this chapter or by a special Act of the legislature that has adopted this chapter before the effective date of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, shall automatically grant a permit for each well in that district that was in existence before the effective date of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, and that produces more than 25,000 gallons but not more than 100,000 gallons a day. The board shall adopt rules providing for filing of applications for and the issuance of these permits and shall grant a permit immediately on receipt of an application for a permit. On issuance of a permit for a well under this subsection, the well is subject to the jurisdiction of the district, but the permittee may not be required to change or alter the well as a condition for the issuance of this initial permit.

(i) A district created under this chapter on or after the effective date of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, shall automatically grant a permit for each well in that district that is not exempt under this chapter and that is in existence on the date the district is created. The board shall adopt rules providing for filing of applications for and the issuance of these permits and shall grant a permit immediately on receipt of an application for a permit. On issuance of a permit for a well under this subsection, the well is subject to the jurisdiction of the district, but the permittee may not be required to change or alter the well as a condition for the issuance of this initial permit.

Sec. 52.171 ~~[52-110]~~. OPEN OR UNCOVERED WELLS. (a) The district may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.

(b) As used in this section, "open or uncovered well" means an artificial excavation at least 10 feet deep and at least 10 inches but not more than six feet in diameter, that is dug or drilled for the purpose of producing water from the underground water reservoir and is not capped or covered as required by this chapter.

(c) If the owner or lessee fails or refuses to close or cap the well in compliance with this chapter within 10 days after being requested to do so in writing by an officer, agent, or employee of the district, any person, firm, or corporation employed by the district may go on the land and close or cap the well safely and securely.

(d) Reasonable expenses ~~[Expenses]~~ incurred by the district in closing or capping a well; ~~not to exceed \$100;~~ constitute a lien on the land on which the well is located.

(e) The lien is perfected by filing in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:

- (1) the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) the approximate location of the well on the property;
- (4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
- (5) the closing of the well by the district, or by an authorized agent, representative, or employee of the district; and
- (6) the expense incurred by the district in closing the well.

(f) The district may make and enforce rules that are necessary or appropriate to effectively exercise the powers granted in this section.

(g) Nothing in this section affects the enforcement of Chapter 281, Acts of the 51st Legislature, Regular Session, 1949 (Article 9202, Vernon's Texas Civil Statutes) ~~[(Article 1721, Vernon's Texas Penal Code)]~~.

Sec. 52.172 ~~[52-120]~~. ILLEGAL DRILLING AND OPERATION OF WELL; SUIT. (a) Drilling a well without a required permit or operating a well at a higher rate of production than the rate approved for the well is declared to be illegal, wasteful per se, and a nuisance.



(b) A person who has an estate in land which is adjacent to the land on which the well is located, or a part which lies within one-half mile of the well, may sue in a court of competent jurisdiction to restrain or enjoin the illegal drilling or operation, or both. The suit may be brought with or without the joinder of the district.

(c) The aggrieved party may also sue for damages for injuries he may have suffered by reason of the illegal operation and for other relief to which he may be entitled. In a suit for damages, the existence or operation of a well in violation of the rules of the district is prima facie evidence of illegal drainage.

(d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.

(e) The remedies provided by this section are cumulative of other remedies available to the individual or the district.

(f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.

*Sec. 52.173. INFORMATION. Annually, the district shall make available to the department information that it acquires concerning the underground water resources within its jurisdiction. The district shall also provide information to the department concerning its plans and activities in conserving and protecting underground water resources.*

[Sections 52.174 to 52.250 ~~[52.121 to 52.200]~~

reserved for expansion]

#### **SUBCHAPTER F. DISTRICT FINANCES**

*Sec. 52.251. FISCAL YEAR. (a) The district shall be operated on the basis of a fiscal year established by the board.*

*(b) The fiscal year may not be changed during a period in which revenue bonds of the district are outstanding or more than once in a 24-month period.*

*Sec. 52.252. ANNUAL AUDIT. Annually, the board shall have an audit made of the financial condition of the district.*

*Sec. 52.253. DISTRICT AUDIT AND RECORDS. The annual audit and other district records must be open to inspection during regular business hours at the principal office of the district.*

*Sec. 52.254. ANNUAL BUDGET. (a) The board shall prepare and approve an annual budget.*

*(b) The budget shall contain a complete financial statement, including a statement of:*

- (1) the outstanding obligations of the district;*
- (2) the amount of cash on hand to the credit of each fund of the district;*
- (3) the amount of money received by the district from all sources during the previous year;*
- (4) the amount of money available to the district from all sources during the ensuing year;*
- (5) the amount of the balances expected at the end of the year in which the budget is being prepared;*
- (6) the estimated amount of revenues and balances available to cover the proposed budget; and*
- (7) the estimated tax rate that will be required.*

*Sec. 52.255. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the annual budget.*

*(b) Before the 10th day preceding the date set for the hearing, notice of the hearing must be published in a newspaper of general circulation in the district.*

*(c) Any resident of the district is entitled to be present at and participate in the hearing.*

*(d) At the conclusion of the hearing, the board shall act on the budget and may make changes in the proposed budget that in its judgment the interests of the taxpayers demand.*

*Sec. 52.256. AMENDING BUDGET. After the annual budget is adopted, it may be amended on the board's approval.*

*Sec. 52.257. LIMITATION ON EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.*

*Sec. 52.258. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the executive director shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.*

*Sec. 52.259. DEPOSITORY. (a) The board shall name one or more banks to serve as depository for district funds.*

(b) District funds, other than those transmitted to a bank of payment for bonds issued by the district, shall be deposited as received with the depository bank and shall remain on deposit. This subsection does not limit the power of the board to place a portion of the district's funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

**Sec. 52.260. INVESTMENTS.** (a) Funds of the district may be invested and reinvested by the board or its authorized representative in direct or indirect obligations of the United States, the state, or any county, city, school district, or other political subdivision of the state.

(b) Funds of the district may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the state.

(c) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for investments on such terms as the board considers advisable.

**Sec. 52.261. REPAYMENT OF ORGANIZATIONAL EXPENSES.** (a) The district's directors may pay all costs and expenses necessarily incurred in the creation and organization of a district, legal fees, and other incidental expenses and may reimburse any person for money advanced for these purposes.

(b) Payments may be made from money obtained from the sale of bonds first issued by the district or out of maintenance taxes or other revenues of the district.

[Sections 52.262 to 52.290 reserved for expansion]

#### SUBCHAPTER G. BONDS AND NOTES

**Sec. 52.291. ISSUANCE OF BONDS AND NOTES.** (a) The board may issue and sell bonds and notes in the name of the district to:

- (1) acquire land to erect dams or to drain lakes, draws, and depressions;
- (2) construct dams;
- (3) drain lakes, draws, depressions, and creeks;
- (4) install pumps and other equipment; and
- (5) provide facilities for the purchase, sale, transportation, and distribution of surface water and groundwater.

(b) Issuance of bonds and notes authorized by this section shall be approved by the commission in the manner provided for bonds of municipal utility districts under Section 54.516 of this code and rules adopted by the board.

**Sec. 52.292. MANNER OF REPAYMENT OF BONDS AND NOTES.** The board may provide for the payment of principal of and interest on the bonds and notes in any one of the following manners:

- (1) from the levy and collection of ad valorem taxes on all taxable property within the district;
- (2) from fees imposed under Section 52.171 of this code;
- (3) by pledging all or any part of the designated revenues from the ownership or operation of the district's works, improvements, and facilities and from the sale, transportation, and distribution of water; or
- (4) from a combination of the sources listed in Subdivisions (1)-(3) of this section.

**Sec. 52.293. ADDITIONAL SECURITY FOR BONDS AND NOTES.** (a) The bonds and notes may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds and notes.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and notes and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien shall be absolute owner of the properties and rights purchased and may maintain and operate them.

**Sec. 52.294. ELECTION.** (a) Bonds or notes secured in whole or in part by taxes may not be issued by the district until authorized by a majority vote of the qualified voters of the district at an election called for that purpose.

(b) The board may order an election, and the order calling the election shall state the nature and the date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds or notes to be authorized, and the maximum maturity of the bonds or notes.

(c) Notice of an election must be given as provided by Section 52.058(c) of this code for creation elections.

(d) At an election to authorize bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)." At any election to authorize bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

(e) The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds or notes, the bonds or notes may be issued by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds or notes, the bonds or notes may not be issued.

**Sec. 52.295. FORM OF BONDS OR NOTES.** (a) A district may issue its bonds or notes in various series or issues.

(b) Bonds or notes may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state.

(c) A district's bonds and notes and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the district, or may contain a mandatory redemption provision.

(d) A district's bonds and notes may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

**Sec. 52.296. PROVISIONS OF BONDS AND NOTES.** (a) In the orders or resolutions authorizing the issuance of bonds or notes, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds or notes, the pledged revenues, and the operation and maintenance of those works, improvements, and facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds or notes may also prohibit the further issuance of bonds, notes, or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds or notes to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds or notes being issued.

(c) The orders or resolutions of the board issuing bonds or notes may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds or notes.

**Sec. 52.297. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER.** (a) Bonds and notes issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds or notes have been authorized in accordance with law, he shall approve them, and they shall be registered by the comptroller.

(c) After the approval and registration of bonds or notes, the bonds or notes are incontestable in any court or other forum, for any reason, and are valid and binding obligations in accordance with their terms for all purposes.

**Sec. 52.298. REFUNDING BONDS.** (a) A district may issue bonds to refund all or any part of its outstanding bonds or notes, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds or notes being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds or notes and shall be registered by the comptroller on the surrender and cancellation of the bonds or notes being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds or notes being refunded are payable, in which case the refunding bonds may be issued before the cancellation of

*the bonds or notes being refunded. If refunding bonds are issued before cancellation of the other bonds or notes, an amount sufficient to pay the principal of and interest on the bonds or notes being refunded to their maturity dates, or to their option dates if the bonds or notes have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds or notes being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds or notes being refunded.*

*(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8 of the Business & Commerce Code.*

*(g) In lieu of the method set forth in Subsections (a)-(f) of this section, a district may refund bonds, notes, or other obligations as provided by the general laws of the state.*

**Sec. 52.299. BONDS AND NOTES AS INVESTMENTS.** District bonds and notes are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

**Sec. 52.300. BONDS AND NOTES AS SECURITY FOR DEPOSITS.** District bonds and notes are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds or notes are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

**Sec. 52.301. TAX STATUS OF BONDS AND NOTES.** Since a district created under this chapter is a public entity performing an essential public function, bonds and notes issued by the district, any transaction relating to the bonds and notes, and profits made in the sale of the bonds and notes, are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

[Sections 52.302 to 52.350 reserved for expansion]

#### SUBCHAPTER H. TAXES

**Sec. 52.351. LEVY OF TAXES.** (a) The board may annually levy taxes to pay the bonds issued by the district that are payable in whole or in part by taxes.

(b) The board may annually levy taxes to pay the maintenance and operating expenses of the district at a rate not to exceed 50 cents on each \$100 of assessed valuation.

**Sec. 52.352. BOARD AUTHORITY.** (a) The board may levy taxes for the entire year in which the district is created.

(b) The board shall levy taxes on all property in the district subject to district taxation.

**Sec. 52.353. TAX RATE.** In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

**Sec. 52.354. TAX APPRAISAL, ASSESSMENT, AND COLLECTION.** (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

#### [SUBCHAPTER E. TAX AND BOND PROVISIONS]

[~~Sec. 52.201. LIMIT ON TAXING POWER.~~ The district may not levy or collect taxes on property in the district at a rate greater than 50 cents on the \$100 assessed valuation.]

[~~Sec. 52.202. BONDS: APPROVAL OF COMMISSION NOT REQUIRED.~~ A district proposing to issue bonds is not required to submit its plans to and secure approval of the commission under Sections 51.421/51.422 of this code.]

[Sections 52.355 to 52.400 [~~52.203 to 52.300~~] reserved for expansion]

#### SUBCHAPTER I. [F.] JUDICIAL REVIEW

**Sec. 52.401 [~~52.301~~]. SUIT AGAINST DISTRICT OR COMMISSION.** (a) A person, firm, corporation, or association of persons affected by and dissatisfied with any provision of this

chapter or with any rule or order made by a district under this chapter is entitled to file a suit against the district or its directors to challenge the validity of the law, rule, or order. The suit shall be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located.

(b) A person, firm, corporation, or association of persons affected by and dissatisfied with any provision of this chapter or by an act of the commission *other than an order issued under Section 52.056 of this code* is entitled to file suit against the commission to challenge the validity of the law or the act of the commission. The suit shall be filed in a court of competent jurisdiction in Travis County.

Sec. 52.402 ~~[52.302]~~. **SUIT TO BE EXPEDITED.** A suit brought under this subchapter shall be advanced for trial and determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Sec. 52.403 ~~[52.303]~~. **TRIAL OF SUIT.** The burden of proof is on the petitioner, and the challenged law, rule, order, or act shall be deemed prima facie valid; but the trial shall be de novo, and the court shall determine all issues of law and fact independent of any determination by the district or the commission.

Sec. 52.404 ~~[52.304]~~. **SUBCHAPTER CUMULATIVE.** The provisions of this subchapter do not affect other legal or equitable remedies that may be available.

[Sections 52.405 to 52.500 ~~[52.305 to 52.400]~~ reserved for expansion]

#### SUBCHAPTER J. ~~[G.]~~ DISSOLUTION OF DISTRICT

Sec. 52.501 ~~[52.401]~~. **DISSOLUTION.** (a) A district may be dissolved in the manner provided by Sections 51.781-51.792 of this code.

(b) A district composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. In this case, the commissioners court shall levy and collect taxes on all taxable property in the district in an amount sufficient to pay the principal of and interest on the indebtedness when due. The taxes shall be levied and collected in the same manner as county taxes.

(c) This section does not apply to any district composed of territory in more than one county.

**SECTION 5.02.** (a) Not later than January 1, of each odd-numbered year, the Texas Department of Water Resources shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a comprehensive report concerning activities during the preceding two years relating to the creation of underground water districts under Chapter 52, Water Code.

(b) The report must include:

(1) the names and locations of all underground water districts created or attempted to be created on or after the effective date of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985;

(2) the subchapter of Chapter 52, Water Code, under which each district was proposed for creation;

(3) a detailed analysis of each election held to create a district, including analysis of election results, possible reasons for the success or failure to create a district, and the possibility for future voter approval of districts in areas in which attempts to create districts failed;

(4) a detailed analysis of the activities of each district created on or after the effective date of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985;

(5) recommendations for changes in Chapter 52, Water Code, that will facilitate the creation and operation of underground water districts; and

(6) any other information and recommendations that the department considers necessary.

**SECTION 5.03.** Not later than January 1, 1987, the Texas Department of Water Resources shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a study on alternative methods of financing for underground water districts and the feasibility of using fees and other charges as a method for financing underground water districts. The study may include an analysis of various methods of financing including bonds, fees, and charges, recommendations for the use of various methods of financing, suggested legislation, and any other information that the department considers helpful and informative.

#### ARTICLE 6. MISCELLANEOUS PROVISIONS

**SECTION 6.01.** Not later than 180 days after the effective date of this Act, the Texas Water Development Board shall adopt rules to implement Sections 15.106 and 17.125, Water Code.

**SECTION 6.02.** The sum of \$15 million is transferred from the credit of the water assistance fund to the credit of the agricultural trust fund. Of the amount transferred, \$10 million shall be

used as provided by Section 15.431(b), Water Code, and the remainder may be used as provided by Section 15.532, Water Code.

**SECTION 6.03.** In the General Appropriations Act for the fiscal year beginning September 1, 1985, and the fiscal year beginning September 1, 1986, the legislature may transfer funds from the water assistance fund to the general revenue fund in an amount sufficient to cover the administrative expenses incurred under this Act.

**SECTION 6.04.** Chapter 52, Water Code, is amended by adding Section 52.0611 to read as follows:

*Sec. 52.0611. STATE ASSISTANCE. A city, county, or district created under Article III, Section 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution that is located in an area delineated as a critical area under this chapter and in which the qualified voters fail to approve the creation of a district is not eligible to receive any financial assistance from the state under Chapter 15, 16, or 17 of this code.*

**SECTION 6.05.** This Act takes effect when and only if the constitutional amendment proposed by Sections 1 and 2, H.J.R. No. 6, 69th Legislature, Regular Session, 1985, is adopted.

**SECTION 6.06.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on February 13, 1985, by a non-record vote; House refused to concur in Senate amendments to H.B. No. 2 on February 28, 1985, and requested the appointment of a conference committee to consider the differences between the two houses; House adopted the conference committee report on H.B. No. 2 on May 8, 1985, by the following vote: Yeas 125, Nays 17, 2 present, not voting; passed by the Senate, with amendments, on February 27, 1985, by the following vote: Yeas 29, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; Senate adopted the conference committee report on H.B. No. 2 on May 8, 1985, by the following vote: Yeas 30, Nays 0.

Approved: May 23, 1985

Effective: Upon adoption of H.J.R. 6.

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## CHAPTER 134

### S.B. No. 39

An Act relating to vehicle identification numbers on motor vehicles, trailers, and semitrailers; repealing Subsection (e), Section 49, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), as added by Chapter 255, Acts of the 50th Legislature, Regular Session, 1947.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Subsection (e), Section 49, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), as added by Chapter 255, Acts of the 50th Legislature, Regular Session, 1947, is repealed. This section does not affect the validity of Subsection (e), Section 49, Certificate of Title Act, as added by Chapter 105, Acts of the 50th Legislature, Regular Session, 1947, and as subsequently amended.

**SECTION 2.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on January 21, 1985, by the following vote: Yeas 28, Nays 0; passed the House on May 9, 1985, by the following vote: Yeas 145, Nays 0, one present not voting.

Approved: May 24, 1985

Effective: Immediately